

2707
No. 13051

**United States
Court of Appeals**
for the Ninth Circuit.

OREGON-WASHINGTON BRIDGE COMPANY,
a Corporation,

Appellant,

vs.

TUG "LEW RUSSELL, SR.," and CRANE
BARGE No. 25, RUSSELL FAMILY, INC.,
RUSSELL TOWBOAT AND MOORAGE
COMPANY,

Appellees.

Apostles on Appeal

Appeal from the United States District Court for the
District of Oregon

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Portland, Oregon,

Attorneys for Appellees.

In the District Court of the United States for the
District of Oregon

In Admiralty Civil No. 5749

OREGON-WASHINGTON BRIDGE COMPANY,
Libelant,

vs.

TUG "LEW RUSSELL, SR." and CRANE
BARGE No. 25, in Rem,

and

RUSSELL TOWBOAT AND MOORAGE COM-
PANY, Owner of Said Tug and Barge,
Respondents.

LIBEL IN REM AND IN PERSONAM

To the Honorable James Alger Fee, the Honorable
Claude McColloch and the Honorable Gus J.
Solomon, Judges of the Above-Entitled Court:

The libel of Oregon-Washington Bridge Company,
a corporation, against the Tug "Lew Russell, Sr.,"
and the Crane Barge No. 25, their tackle, apparel,
furniture, etc., against Russell Towboat and Moor-
age Compny, a corporation, owner of said Tug and
Barge, and against all persons intervening for their
interests therein, in a cause of action for damages,
civil and maritime, alleges upon information and
belief as follows:

Article I.

That libelant is a corporation duly organized and
existing under and by virtue of the laws of the State

of Washington having a principal place of business at Olympia, Washington, and owning and operating a highway bridge across the Columbia River near the town of Hood River, Oregon, known as the Hood River-White Salmon Bridge.

Article II.

That respondent, Russell Towboat and Moorage Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon and having a principal place of business at Portland, Multnomah County, Oregon; that at the times herein mentioned said respondent was the owner and operator of the Tug "Lew Russell, Sr.," and the Crane Barge No. 25.

Article III.

That at and prior to 11:30 a.m. on June 13, 1950, respondent, Russell Towboat and Moorage Company, was moving said Tug "Lew Russell, Sr." upstream or easterly on the Columbia River with the Crane Barge No. 25 carrying a Whirley Crane in tow when said equipment ran into and against the Hood River-White Salmon Bridge owned and operated by libelant, striking the lift span of said bridge, tearing out a large section of the railing, entirely shearing off one vertical member and buckling another and badly distorting two of the large horizontal braces, damaging the electrical installation, the railing and the tool house on said bridge and so weakening and damaging said bridge that it was not capable of handling trucks and trailers or heavy

traffic; necessitating temporary emergency repairs in the amount of \$3,811.18 and further repairs at the estimated cost of \$23,710.00, and causing loss of revenue from the use of said bridge in the amount of \$3,100.00 and damaging libelant and libelant's said property to an extent which libelant alleges on information and belief to be equal to or exceed the sum of \$30,621.18.

Article IV.

That the damage to libelant and libelant's said property was caused by the carelessness, recklessness and negligence of the respondent and the pilot, master, officers and crew of the tug in the following respect, among others:

1. In failing to maintain a proper or any look-out;
2. In proceeding at a high, dangerous and reckless speed under the circumstances;
3. In failing to keep said tug and crane under proper or any control;
4. In failing to lower the derrick boom so that it would pass under the draw of the bridge.

Article V.

That said Tug "Lew Russell, Sr." and the Derrick Barge No. 25 are now or will be during the pendency of process hereunder within this district and within the jurisdiction of this Honorable Court.

Article VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelant prays:

1. That a process in due form of law according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against Crane Barge No. 25 and the tug "Lew Russell, Sr.," its engines, boilers, etc.;

2. That all persons claiming any interest therein may be required to appear and answer on oath all and singular the matters aforesaid;

3. That libelant may have a decree for its damages with interest and costs;

4. That said tug "Lew Russell, Sr.," and said Crane Barge No. 25 may be condemned and sold to satisfy the damages of the libelant herein;

5. That process in due form of law according to the practice of this Honorable Court may issue against the respondent, Russell Towboat and Moorage Company, citing it to appear and answer on oath the matters and things aforesaid;

6. That this Honorable Court may adjudge and decree that the respondent, Russell Towboat and Moorage Company, pay to the libelant its damages as aforesaid with interests and costs, and

7. That the court will grant to the libelant such

other and further relief as the justice of the cause may require.

/s/ H. LAWRENCE LISTER,

GRAY & LISTER,

Proctors for Libelant.

State of Oregon,

County of Multnomah—ss.

I, H. Lawrence Lister, of proctors for libelant, certify that the within libel is true to the best of my knowledge, information and belief. I make this verification for the reason that none of the officers of the libelant are within the district; and I have familiarized myself with the facts.

/s/ H. LAWRENCE LISTER.

Subscribed and sworn to before me this 11th day of September, 1950.

[Seal] /s/ WENDELL GRAY,

Notary Public for Oregon.

My commission expires Jan. 14, 1951.

[Endorsed]: Filed Sept. 11, 1950.

Title of District Court and Cause.]

LIBELANT'S STIPULATION FOR COSTS

Whereas, a libel was filed in this Court on the 11th day of September, 1950, by the above-named libelant against the above-named respondent for

reasons and causes in said libel mentioned and the said libelant and Fireman's Fund Indemnity Company, a corporation of the State of California, authorized to transact surety business in the State of Oregon, parties hereto, hereby consent and agree that in case of default or a contumacy on the part of said libelant or their surety, execution may issue against their goods, chattels and lands for the sum of \$250.00.

Now, Therefore, It is hereby stipulated and agreed for the benefit of whom it may concern that the undersigned shall be, and each of them is, bound in the sum of \$250.00, conditioned that libelant above named shall pay all costs and charges that may be awarded against it in any decree of this Court or in case of appeal, by the Appellate Court.

Dated this 11th day of September, 1950.

OREGON-WASHINGTON
BRIDGE COMPANY,

By /s/ H. LAWRENCE LISTER,
Proctor.

FIREMAN'S FUND
INDEMNITY COMPANY,

By /s/ GEORGE J. CAMPBELL,
Attorney-in-Fact.

[Endorsed]: Filed Sept. 11, 1950.

[Title of District Court and Cause.]

CLAIMS OF OWNERS

Russell Towboat & Moorage Co., owner of the tug
Lew Russell, Sr., and Russell Family, Inc., owner
of Crane Barge No. 25, appear before this Honor-
able Court and respectively claim said tug and
barge, and pray leave to defend this suit accordingly.

RUSSELL TOWBOAT &
MOORAGE CO.,

By /s/ LEW S. RUSSELL, JR.,
President.

RUSSELL FAMILY, INC.,

By /s/ LEW S. RUSSELL, JR.,
Secretary,
Claimants.

WOOD, MATTHIESSEN &
WOOD,
Proctors.

Service accepted.

[Endorsed]: Filed Oct. 28, 1950.

reasons and causes in said libel mentioned and the said libelant and Fireman's Fund Indemnity Company, a corporation of the State of California, authorized to transact surety business in the State of Oregon, parties hereto, hereby consent and agree that in case of default or a contumacy on the part of said libelant or their surety, execution may issue against their goods, chattels and lands for the sum of \$250.00.

Now, Therefore, It is hereby stipulated and agreed for the benefit of whom it may concern that the undersigned shall be, and each of them is, bound in the sum of \$250.00, conditioned that libelant above named shall pay all costs and charges that may be awarded against it in any decree of this Court or in case of appeal, by the Appellate Court.

Dated this 11th day of September, 1950.

OREGON-WASHINGTON
BRIDGE COMPANY,

By /s/ H. LAWRENCE LISTER,
Proctor.

FIREMAN'S FUND
INDEMNITY COMPANY,

By /s/ GEORGE J. CAMPBELL,
Attorney-in-Fact.

[Endorsed]: Filed Sept. 11, 1950.

[Title of District Court and Cause.]

CLAIMS OF OWNERS

Russell Towboat & Moorage Co., owner of the tug
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able Court and respectively claim said tug and
barge, and pray leave to defend this suit accordingly.

RUSSELL TOWBOAT &
MOORAGE CO.,

By /s/ LEW S. RUSSELL, JR.,
President.

RUSSELL FAMILY, INC.,

By /s/ LEW S. RUSSELL, JR.,
Secretary,
Claimants.

WOOD, MATTHIESSEN &
WOOD,
Proctors.

Service accepted.

[Endorsed]: Filed Oct. 28, 1950.

[Title of District Court and Cause.]

ANSWER OF RESPONDENTS AND
CLAIMANTS

To the Honorable Judges of the Above-Entitled
Court:

The answer of respondents and claimants, Russell Towboat & Moorage Co. and Russell Family, Inc., admits, denies and alleges as follows:

Article I.

Answering Article I of the libel respondents and claimants deny knowledge or information sufficient to form a belief of the allegations thereof.

Article II.

Answering Article II of the libel said respondents and claimants admit that each of them is a corporation organized and existing under the laws of the State of Oregon, and admit that Russell Towboat & Moorage Co. at all times mentioned herein was the owner and operator of the tug Lew Russell, Sr., but deny that either of said respondents had a place of business in Portland and allege that the Towboat Company's place of business was and is Vancouver, Washington, and deny that Russell Towboat & Moorage Co. was the owner and operator of Crane Barge No. 25, and allege the truth to be that Russell Family, Inc. was the owner thereof.

Article III.

Answering Article III respondents and claimants

admit that Russell Towboat & Moorage Co., at and prior to 11:30 a.m. on June 13, 1950, was moving said tug Lew Russell, Sr. upstream, or easterly, on the Columbia River with the Crane Barge No. 25, carrying a whirley crane, in tow, and that at about said time and place said equipment ran into and against the Hood River-White Salmon Bridge, owned and operated, as respondents are informed and believe and therefore say, by libelant, striking the lift span of said bridge and doing certain damage thereto, the exact nature of which respondents cannot at this time detail. The remaining allegations of said Article III respondents and claimants have not sufficient knowledge to answer and therefore deny the same.

Article IV.

Respondents and claimants deny the allegations of Article IV and each of them.

Article V.

Respondents and claimants admit the allegations of Article V.

Article VI.

Respondents and claimants admit the admiralty and maritime jurisdiction but deny that all or singular the premises are true.

For a further and separate answer and defense respondents and claimants allege as follows:

Article I.

The tug Lew Russell, Sr., with the Crane Barge on its starboard side and a gravel barge on the port

side, was proceeding up the Columbia River on June 13, 1950, and had given over 12 hours' advance notice to the owner and operator of the Hood River-White Salmon Bridge that they would be passing through the bridge so that the bridge tender could be on duty to lift the draw; that in pursuance of said notice and in conformity therewith the combined tug and tow approached the bridge from the downstream side at about 11:30 a.m. on said date, and when they reached a point about one-quarter of a mile downstream from the bridge the motors on the tug were stopped and the combined tug and tow waited until the bridge draw was raised. In that situation the bridge draw was raised and came to a stop at a height which appeared to the pilot of the tug to give sufficient clearance for the combined tug and tow to pass through; consequently they resumed their forward motion and it was not until they were within 10 or 15 feet from the bridge that it became apparent that the bridge draw had not been raised high enough to clear the crane boom on the barge, and the pilot of the tug then stopped his engines and reversed but was unable to prevent the boom colliding with the bridge; that the reason that the bridge draw was not lifted higher was that the electric power which operated it failed and the bridge gave no signal or warning that the draw was stuck. The bridge tender says that he attempted to stop the tug and tow by waving his hat but that because of the beams or braces of the bridge the pilot could not see him waving, and in fact, the pilot did not see him and received no warning of any kind

from the bridge. The accident happened through no fault of any kind on the part of the tug or the tow but through the fault of the bridge in not raising the draw lift higher and in leading the tug to assume that the lift was high enough and in not keeping the operating machinery of the draw maintained in a serviceable condition, or opening and closing it at intervals frequent enough to make sure that the machinery was in proper order for operation, as required by the United States Army Engineers' Regulations, and were also in fault for not providing the bridge with some emergency signal which could be used in the event of a power failure, and in not signalling in some visible manner to the tug that the draw lift was stuck, since this was a fact not discernible by the pilot on the tug.

Article II.

All and singular the premises are true and within the admiralty jurisdiction of this Honorable Court.

Wherefore, respondents and claimants pray that the libel be dismissed and that they may recover their costs and disbursements, and for such other relief as to the Court seems just and in accordance with the admiralty practice.

WOOD, MATTHIESSEN &
WOOD,

/s/ ERSKINE WOOD,

Proctors for Respondents and
Claimants.

State of Oregon,
County of Multnomah—ss.

I, Lew Russell, Jr., being first duly sworn, say that I am President of Respondent Russell Towboat & Moorage Co. in the above-entitled cause; that I am familiar with the contents of the within Answer, and that the allegations therein contained are true, as I verily believe.

/s/ LEW RUSSELL, JR.

Subscribed and sworn to before me this 20th day of November, 1950.

[Seal] /s/ E. J. BUHLINGER,
Notary Public for Oregon.

My commission expires Jan. 13, 1953.

Service admitted.

[Endorsed]: Filed Nov. 22, 1950.

[Title of District Court and Cause.]

STIPULATION TO ABIDE BY AND PAY THE
DECREE, SUBSTITUTED FOR STIPULA-
TION DATED OCTOBER 27, 1950

Whereas, a claim to said tug has been filed by the owner thereof, Russell Towboat & Moorage Co., and the said claimant and its surety, The Travelers Indemnity Company, hereby consenting and agreeing that in case of default or contumacy on the part of said claimant, execution issue against their goods,

chattels and lands for the sum of Thirty-one Thousand Dollars (\$31,000.00),

It is Hereby Stipulated and Agreed for the benefit of whom it may concern that the said claimant and the said surety are jointly and severally bound in the sum of Thirty-one Thousand Dollars (\$31,000.00), conditioned that the said claimant, Russell Towboat & Moorage Co., shall abide by and pay the money, including costs and disbursements awarded against it by the final decree rendered in this cause by this court, or in case of an appeal by the appellate court.

This bond to become effective immediately on cancellation by order of the above-entitled court of said stipulation dated October 27, 1950.

Dated December 21st, 1950.

**RUSSELL TOWBOAT &
MOORAGE CO.**

By /s/ THOMAS J. WHITE,
Attorney, Principal.

[Seal] **THE TRAVELERS
INDEMNITY COMPANY,**

By /s/ H. V. LACEY,
Surety.

[Endorsed]: Filed Dec. 22, 1950.

[Title of District Court and Cause.]

ORDER PERMITTING ERSKINE WOOD,
ATTORNEY TO WITHDRAW

December 22, 1950

Libelant appearing by Mr. H. L. Lister, of proctors, and the respondents by Mr. Lofton L. Tatum, of proctors.

It Is Ordered that Mr. Erskine Wood, be, and he is hereby, permitted to withdraw as proctor for the respondents, and that Mr. Thomas J. White, an attorney of this court, be and he is hereby, appointed as proctor on behalf of the respondents.

[Title of District Court and Cause.]

STIPULATION OF PROCTORS

It is hereby stipulated by and between Messrs. Gray and Lister by H. Lawrence Lister, Proctors for libelant Oregon-Washington Bridge Company, and Messrs. Wood, Matthiessen & Wood by Erskine Wood, Proctors for respondent and claimant Russell Towboat and Moorage Company, as follows:

(1) That said parties have no objection to Russell Family, Inc., filing and prosecuting its intervening libel in the above-entitled cause;

(2) That said intervening libelant Russell Family, Inc. may apply to the above-entitled Court ex parte, and without notice for order permitting

the filing of an intervening libel in rem and personam in the above-entitled cause.

Dated, December 26, 1950.

/s/ H. LAWRENCE LISTER,
Proctor for Libelant.

/s/ ERSKINE WOOD,
Proctor for Respondent and Claimant Russell Tow-
boat & Moorage Company.

[Endorsed]: Filed Dec. 27, 1950.

[Title of District Court and Cause.]

ORDER PERMITTING FILING OF INTER-
VENING LIBEL IN REM AND PERSONAM

Upon the reading of the petition and intervening libel in rem and personam of Russell Family, Inc., and the stipulation of proctors in the above-entitled cause, and good cause appearing therefor;

It Is Hereby Considered and Ordered that Russell Family, Inc., may intervene in the above-entitled cause in admiralty and file its intervening libel in rem and personam.

Dated this 27th day of December, 1950.

/s/ CLAUDE McCOLLOCH,
Judge of the U. S. District
Court.

[Endorsed]: Filed Dec. 27, 1950.

In the District Court of the United States for the
District of Oregon

In Admiralty—Civil No. 5749

OREGON-WASHINGTON BRIDGE COMPANY,
Libelant,

vs.

TUG “LEW RUSSELL, SR.” and CRANE
BARGE NO. 25, in Rem,

and

RUSSELL TOWBOAT AND MOORAGE COM-
PANY, Owner of Said Tug and Barge,
Respondents.

RUSSELL FAMILY, INC., a Corporation,
Intervening Libelant,

vs.

THE HOOD RIVER-WHITE SALMON BRIDGE,
Its Gear and Paraphernalia, in Rem,

and

OREGON-WASHINGTON BRIDGE COMPANY,
a Corporation, Owner and Operator of Said
Bridge,

Respondents.

PETITION AND INTERVENING LIBEL IN
REM AND PERSONAM

To the Honorable James Alger Fee, the Honorable
Claude McColloch, and the Honorable Gus
Jerome Solomon, Judges of the Above-Entitled
Court, in Admiralty Sitting:

Comes now Russell Family, Inc. a corporation as the owner of the "Crane Barge No. 25," petitions the Court for leave to intervene in the above suit in admiralty; to implead the "Hood River-White Salmon Bridge" and to file and prosecute the herein intervening libel against said Hood River-White Salmon Bridge and the Oregon-Washington Bridge Company, in personam and rem, and for cause of action for damages, civil and maritime alleges:

Article I.

That the relief sought by intervening libelant in this herein intervening libel arises out of the same collision and/or events as does the claims and allegations made by original libelant Oregon-Washington Bridge Company against certain respondents in this cause No. 5749, now pending.

Article II.

That the intervening libelant, Russell Family, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon with its principal place of business in the City of Portland, Oregon. That said intervening libelant was at all times herein mentioned and now is the owner of that certain Crane Barge No. 25 together with its gear, tackle and paraphernalia thereon, including a Whirley Crane attached thereto.

Article III.

That now and at all times herein mentioned respondent Oregon-Washington Bridge Company was and now is a corporation organized and existing

under the laws of the State of Washington, and doing business within the State of Oregon in connection with the ownership and operation of that certain highway bridge across the Columbia River in the State of Oregon, near the town of Hood River, known as the Hood River-White Salmon Bridge.

Article IV.

That respondent Hood River-White Salmon Bridge, is a structure erected across the Columbia River near the town of Hood River, Oregon, containing a draw to permit passage of vessels under same and was at all times herein mentioned owned and operated by said respondent Oregon-Washington Bridge Company.

Article V.

That at all times herein mentioned Crane Barge No. 25, its equipment, gear and paraphernalia was unmanned.

Article VI.

That on or about the 13th day of June, 1950, that certain Crane Barge No. 25, together with its gear and paraphernalia was being moved up the Columbia River by a tug named "Lew Russell, Sr.," which tug was being operated by others than this intervening libelant. That the operator of said tug, "Lew Russell, Sr.," had given over twelve hours advance notice to the owner and operator of said Hood River-White Salmon Bridge, to effect that said tug with said Crane Barge No. 25 would be passing through said Hood River-White Salmon Bridge; that in pursuance of said notice, and in conformity there-

with, said tug and its tow, (Crane Barge No. 25), approached said bridge of the downstream side at about 11:30 a.m. on the 13th day of June, 1950, and when said tug with its tow reached a point about one-quarter of a mile downstream from said bridge, the engines on said tug were stopped and the combined tug and tow waited until the bridge draw was raised. That respondent, Oregon-Washington Bridge Company did raise the draw of said bridge but failed and neglected to raise said draw high enough to permit the passage of the tug and tow under same. That the fact that said draw bridge was not raised sufficiently to permit clearance of said tug and tow was not discernible to the pilot of said tug at the time said draw came to rest at its raised height and at the time the said tug, with its tow, resumed its forward motion up the river. It was not until said tug and tow were within ten or fifteen feet of the bridge that it became apparent to the pilot of said tug that the bridge draw had not been raised high enough to clear the crane boom on said Barge No. 25. At that time the pilot of said tug immediately stopped the engines of said tug and reversed same but was unable to prevent the boom on said crane barge No. 25 from striking said bridge draw which had not been raised sufficiently. That at no time from the moment the said bridge draw was raised until said collision, did the pilot of the tug receive any signal or warning from the bridge.

Article VII.

That the damage to said intervening libelant and

its property as hereinafter more particularly set forth was caused by the carelessness and negligence of respondent Oregon-Washington Bridge Company and its agents in the following respects among others:

(1) In failing to raise the draw of said bridge sufficiently high to permit clearance of libelant's Crane Barge No. 25.

(2) Failure to give any signal or warning to said tug and tow that was proceeding under said bridge of the fact that said draw was not raised sufficiently to permit passage of said tug and tow.

(3) Failure to keep the machinery that operated the said draw maintained in a serviceable condition.

(4) Failure to open and close said bridge at intervals frequently enough to assure that the machinery for operating same was in proper order, or otherwise test such machines as is required by the United States Engineers Regulations respecting the operation of draw bridges over navigable waters at will or by reasonable prudence.

(5) Failure to have any emergency signals or equipment for making such signals available upon said bridge for warning vessels away from passing through said bridge when the bridge was not properly and sufficiently opened in the event of any power failure or other reasons for failure of normal signalling equipment to operate.

(6) Knowing that by reason of the circumstances

the pilot of the tug and tow had to rely upon the operator of said bridge to raise same to the proper height to permit passage of the tug and tow thereunder and said operator failing to notice in time the creation of the dangerous situation and condition involved in his failure to raise said draw to the proper height and when said operator of the bridge, if he did notice said dangerous situation, failing to adequately and properly, or at all, warn pilot of said tug towing said barge of the danger.

Article VIII.

That as the direct and proximate result of the negligence of respondent the crane secured to the deck of said Crane Barge No. 25 was ripped from the deck plates damaging said barge as well as said crane. That the reasonable and necessary cost to repair said barge and the crane attached thereto was \$1,824.24 which intervening libelant paid to have said damage repaired and to place said barge and crane in the condition it was immediately before the aforesaid collision.

Article IX.

That libelant was damaged by loss of use of said Crane Barge No. 25 for a period of one month which time was the necessary and reasonable length of time required to repair said Crane Barge No. 25. That the value of use of said Crane Barge No. 25 is \$2,500.00 per month and in this respect, by reason of loss of use of said Crane Barge No. 25, while the same was being repaired, intervening libelant was further damaged in the amount of \$2,500.00.

Article X.

That said respondent Hood River-White Salmon Bridge and said respondent Oregon-Washington Bridge Company are each now within the geographical jurisdiction of this Honorable Court.

Article XI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, intervening libelant prays:

(1) That a process in due form of law according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against Hood River-White Salmon Bridge;

(2) That any persons claiming any interest therein may be required to appear and answer on oath all and singular the matters aforesaid;

(3) That libelant may have a decree for its damages in the sum of \$4,324.24, together with interest thereon as allowed by law, and costs of libel incurred herein;

(4) That said Hood River-White Salmon Bridge may be condemned and sold to satisfy the damages of the libelant herein;

(5) That process in due form of law, according to the practice of this Honorable Court, may issue against the respondent, Oregon-Washington Bridge Company, citing it to appear and answer on oath the matters and things aforesaid;

(6) That this Honorable Court may adjudge and decree that the respondent Oregon-Washington Bridge Company, pay to intervening libelant its damages as aforesaid with interest and costs, and

(7) That the Court will grant to this intervening libelant such other further relief as the justice of the cause may require.

/s/ THOMAS J. WHITE,

/s/ WILLIAM F. WHITE,

Proctors for Intervening
Libelant.

State of Oregon,
County of Multnomah—ss.

I, Lew S. Russell, Jr., being first duly sworn, upon oath depose and say: That I am the Secretary of Libelant corporation, Russell Family, Inc.; That I have read the foregoing Petition and Intervening Libel, know the contents thereof, and that it is true as I verily believe.

/s/ LEW S. RUSSELL, JR.,

Subscribed and sworn to before me on the 22nd day of December, 1950.

[Seal] /s/ THOMAS J. WHITE,
Notary Public for Oregon.

My commission expires July 30, 1954.

[Endorsed]: Filed Dec. 27, 1950.

[Title of District Court and Cause.]

LIBELANTS' STIPULATION FOR COSTS

Whereas, the above-entitled intervening libelant, Russell Family, Inc., a corporation, are filing an intervening libel in the above-entitled court and cause against the Hood River-White Salmon Bridge, its gear and paraphernalia, in rem, and Oregon-Washington Bridge Company, a corporation, Owner and Operator of said Bridge, as respondents, for reasons and causes in the said intervening libel mentioned, and Russell Family, Inc., a corporation, as principal and American Surety Company of New York, a corporation, authorized to transact a surety business in the State of Oregon as surety, parties hereto, hereby agreeing and consenting that in case of default or contumacy on the part of said Russell Family, Inc., or said surety, execution may issue against their, and each of their goods, chattels and land in the sum of \$250.00;

Now Therefore, It Is Hereby Stipulated and Agreed for the benefit of whom it may concern that the undersigned shall be, and each of them is, bound in the sum of \$250.00, conditioned that the said Russell Family, Inc., shall pay all costs and charges that may be awarded against it in any decree of this court or in the case of appeal, by the appellant court, in this cause.

Dated at Portland, Oregon, this 26th day of December, 1950.

RUSSELL FAMILY, INC.,

By /s/ WILLIAM F. WHITE,
One of Their Proctors,
"Principal."

[Seal] AMERICAN SURETY COM-
PANY OF NEW YORK,

By /s/ JEAN D. SAUNDERS,
President, Vice-President,
"Its Surety."

By /s/ J. SWANSON,
Resident Assistant Secretary.

[Endorsed]: Filed Dec. 28, 1950.

[Title of District Court and Cause.]

ANSWER OF LIBELANT TO THE INTER-
VENING LIBEL IN REM AND PER-
SONAM FILED BY RUSSELL FAMILY,
INC.

To the Honorable James Alger Fee, the Honorable
Claude McColloch, and the Honorable Gus
Jerome Solomon, Judges of the Above-Entitled
Court, in Admiralty Sitting:

Comes now libelant, Oregon-Washington Bridge
Company, and for answer to the Intervening Libel
in Rem and Personam filed by Russell Family, Inc.,
admits, denies and alleges:

.

Article I.

Admits the allegations of Article I.

Article II.

Admits that the Russell Family, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon with its principal place of business in the City of Portland, Oregon. Alleges that libelant has no knowledge or information sufficient to form a belief as to the truth or falsity of the other allegations of Article II and therefore denies the same and the whole thereof, except as herein specifically admitted.

Article III.

Admits the allegations of Article III.

Article IV.

Admits the allegations of Article IV.

Article V.

Alleges that libelant has no knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Article V, and therefore denies the same and the whole thereof.

Article VI.

Admits that on or about the 13th day of June, 1950, that certain Crane Barge No. 25, together with its gear and paraphernalia was being moved up the Columbia River by a tug named "Lew Russell, Sr."; that over twelve hours advance notice to representatives of the owner and operator of said

Hood River-White Salmon Bridge had been given to the effect that the tug with the tow would be passing through said Hood River-White Salmon Bridge; that said tug with its tow approached the bridge on the downstream side at about 11:30 a.m. on the 13th day of June, 1950; that libelant, Oregon-Washington Bridge Company, did raise the draw of its bridge to a point where further raising was made impossible because of the failure of the power which was supplied by a third party not under the direction and control of libelant and that before the draw of the bridge had been raised sufficiently to permit the crane barge with its crane in an elevated position to pass under said draw, the said crane barge ran into and against the bridge draw or the lift span of said bridge; that as soon as it became evident to the representatives of libelant that the power had failed and that the draw could not be raised higher, signals were given to the persons in charge of Crane Barge No. 25, and an attempt was made to warn and halt the forward progress of said Crane Barge No. 25, but regardless of this effort, said Crane Barge No. 25, continued upstream with the crane in a raised position and so proceeding ran into and against the lift or draw span of said bridge, causing the damage complained of in libelant's libel. Except as herein specifically admitted and alleged, denies each and every allegation and the whole of Article VI.

Article VII.

Denies each and every allegation and the whole

of Article VII. Libelant further alleges that the crane on said Crane Barge No. 25, could have been lowered and so passed under the draw span of said bridge in the position in which it was stopped at the time the accident occurred.

Article VIII.

Denies each and every allegation and the whole of Article VIII.

Article IX.

Alleges that libelant has no knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Article IX and therefore denies the same and the whole thereof.

Article X.

Admits the allegations of Article X.

Article XI.

Admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court. Except as herein specifically admitted, denies each and every allegation and the whole of Article XI. Except as herein specifically admitted, denies each and every allegation and the whole of Article XI.

Wherefore, libelant prays that the Intervening Libel in Rem and in Personam be dismissed and that it recover its costs and disbursements from Russell Family, Inc., a corporation, intervening libelant, and for such other and further relief as

to the court seems just and in accordance with admiralty practice.

GRAY & LISTER,

/s/ H. LAWRENCE LISTER,

Proctors for Libelant and Respondent to Intervening Libel.

State of Oregon,

County of Multnomah—ss.

I, Elbert M. Chandler, being first duly sworn say that I am the President of Oregon-Washington Bridge Company, libelant and respondent to Intervening Libel in the above-entitled court and cause; that I am familiar with the contents of the within Answer of Libelant to the Intervening Libel in Rem and Personam and that the allegations therein contained are true as I verily believe.

/s/ ELBERT M. CHANDLER.

Subscribed and sworn to before me this 2nd day of January, 1951.

[Seal] /s/ H. LAWRENCE LISTER,
Notary Public for Oregon.

My commission expires May 2, 1952.

Service of the within Answer by certified copy at Portland, Oregon, this day of January, 1951, is hereby admitted.

/s/ ERSKINE WOOD,
Of Proctors for Respondents, Russell Towboat &
Moorage Company and Tug "Lew Russell Sr."

THOMAS J. WHITE,
By /s/ WILLIAM F. WHITE,
Of Proctors for Intervening
Libelant.

[Endorsed]: Filed Jan. 3, 1951.

[Title of District Court and Cause.]

COST BILL OF RUSSELL FAMILY, INC.

Statement of Disbursements claimed by the Russell Family, Inc., Intervening Libelant, in the above-entitled cause, viz.:

Claim:

Attorneys Fees, Proctors Fee (Statutory)	\$20.00
Premium for Corporate Surety Bond for	
Costs	10.00

Allowed:

Cost Taxed at.....	\$30.00
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Dated Feb. 21st, 1951.

/s/ LOWELL MUNDORFF,
Clerk.

By /s/ F. L. BUCK,
Chief Deputy.

Duly verified.

[Endorsed]: Filed Feb. 16, 1951.

[Title of District Court and Cause.]

LIBELANT'S EXCEPTIONS AND OBJEC-
TIONS TO THE FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECREE

Comes now libelant and excepts to the findings of fact presented in the above-captioned court and cause on the ground and for the reason that said findings

of fact, conclusions of law and decree and each thereof are contrary to the evidence and the law and libelant specifically excepts to the finding in paragraph 4, to the effect that the tug and tow came to a stop more than a quarter of a mile below the bridge owned and operated by libelant.

Libelant further excepts to the finding that the navigator of the tug rightly and justifiably believed that the bridge tender had raised it high enough to enable the tug and tow to pass through.

Libelant further excepts to the finding that it is immaterial that no signal required by the regulations promulgated by the Corps of Engineers was given by the tug in that under the decisions the giving of the signal required by statute is a condition precedent to any assumption on the part of the tug operator that the bridge would be in readiness for his tug and tow to pass through.

Libelant further excepts to the proposed finding that there had been power failures on several occasions prior to June 13, 1950, on the ground and for the reason that this proposed finding is not consistent with the evidence.

Libelant further excepts to the proposed finding that the line of vision between the tug operator and the bridge tender was obstructed by the steelwork of the bridge upon the ground and for the reason that the exhibits in evidence and the testimony demonstrate that the bridge tender was clearly visible to the tug operator for a considerable distance and at least during the last 300 feet traveled by said tug and tow prior to the impact.

Libelant further excepts to the statement in the proposed findings of fact appearing in lines 31 and 32, page 3, and lines 1 and 2, page 4, of the proposed findings of fact upon the ground and for the reason that the statement of the bridge tender was not admitted in evidence and libelant moves that said language be deleted from the proposed findings of fact.

Libelant excepts to the proposed finding in paragraph 5, that the crane barge was damaged as a direct and proximate result of the negligence of Oregon-Washington Bridge Company, and its bridge.

Libelant excepts to the attempt to incorporate in the findings of fact the opinion of the court set out in paragraph 6, pages 4 and 5, of the proposed findings of fact.

Libelant excepts to the proposed conclusions based upon said proposed findings of fact and libelant excepts to the decree presented to the court based upon said findings of fact and conclusions of law. In presenting each and every exception libelant contends that the proposed findings of fact, conclusions of law and decree and each thereof are not supported by the evidence but are contrary to the evidence, the preponderance of which evidence establishes the facts that the collision and the resulting damages were caused by the failure of the tug and its operators to maintain a proper or any lookout; in proceeding at a speed which made it impossible to stop the tug and its tow when the operator thereof became aware of the impending

collision and in failing to keep the tug and the barge under such control that it could have been stopped or otherwise maneuvered so as to have avoided colliding with the bridge and in failing and neglecting to give the signal required by the regulations and waiting thereafter until some affirmative evidence had been furnished by the bridge or its tender that the bridge was in readiness for the tug and tow to proceed.

Dated this 20th day of February, 1951.

Respectfully submitted,

/s/ H. LAWRENCE LISTER,

GRAY & LISTER,

Proctors for Libelant.

State of Oregon,

County of Multnomah—ss.

Due service of the within Exceptions and Objections is hereby accepted this 20th day of February, 1951, by receiving a copy thereof, duly certified to as such by H. Lawrence Lister, of proctors for Libelant

/s/ ERSKINE WOOD,

Of Proctors for Respondent, Russell Towboat and Moorage Company, et al.

/s/ THOMAS J. WHITE,

Of Proctors for Russell Family, Inc., Intervening Libelant.

[Endorsed]: Filed Feb. 20, 1951.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSION

Findings of Fact

1. Oregon-Washington Bridge Company, is a Washington corporation, and at the time of the collision hereinafter referred to was the owner and operator of the Hood River-White Salmon Bridge across the Columbia River. Russell Towboat and Moorage Company at the time of said collision and Russell Family, Inc., were respectively the owners of the Tug "Lew Russell, Sr." and Crane Barge No. 25, and each is an Oregon corporation.

2. On June 13, 1950, shortly before 12 o'clock noon, the tug "Lew Russell, Sr." with Crane Barge No. 25, in tow, attempted to proceed through the said bridge, and because the draw lift was not raised high enough the end of the boom on Crane Barge No. 25, collided with the drawlift, and said lift and said boom were each damaged.

3. Oregon-Washington Bridge Company filed its libel against the tug and the barge and their owners for damage to the bridge, and Russell Family, Inc., as owner of the barge, filed its intervening libel against the bridge and its owner for damages to the boom. The case was tried on these libels and the answers thereto and all the evidence was taken in open court, the witnesses testifying in person.

4. The facts and circumstances of the collision were as follows:

The bridge is high enough above the water so that ordinary river craft can pass through it without lifting the draw. When, however, because of the stage of the water or the height of any craft, it is necessary to raise the drawlift, the practice is for the owner of the craft to give 12 hours' notice to the bridge that it is intending to pass through the bridge, so that the bridge tender can be on hand to lift the draw. Pursuant to this practice the owner of the tug "Lew Russell, Sr." gave the required notice that it would be passing through the bridge with a high tow, and would require the draw to be lifted. In consequence, the bridge tender and an associate electrician were on the bridge on hand to raise the draw when the tug and tow approached. The tug and tow did approach and came to a stop more than a quarter of a mile below the bridge. This was shortly before noon on June 13, 1950, on a clear, sunny day. The bridge tender recognized the tug and tow as the ones for which notice had been given and raised the draw lift a distance of about $13\frac{1}{2}$ feet from its original position. The lift then came to a stop because of a failure of electric power, which was furnished from the shore. The navigator of the tug, seeing the draw lift raised and then come to a stop, rightly and justifiably believed that the bridge tender had raised it high enough to enable the tug and tow to pass through. He thereupon started up his engines, resumed his speed and proceeded forward at a speed of about $1\frac{1}{2}$

miles per hour. The Regulations promulgated by the Corps of Engineers provide that a vessel desiring the draw to lift shall signify that fact by a whistle signal. In this instance no such signal was given by the tug. But that is immaterial and in no way was a contributing cause of the collision because the fact is that the bridge tender saw the tug and tow, knew it was the tug and tow which he had been expecting, and proceeded to raise the lift precisely as he would have done had a signal been given.

The bridge was equipped with a whistle, which, had there been no power failure, it could have used to sound a warning or danger signal to the tug when the draw lift came to a stop. But the whistle was also dependent upon the electric power, and consequently when that power failed the whistle could not be used. There was no auxiliary whistle or other emergency signal of any kind on the bridge which could be operated in the event of a power failure, although power failures had occurred on at least three occasions before this, not, however, while the draw lift was being raised.

The bridge tender, when he realized that the lift was stuck, stepped out on the platform of the control tower on the upstream side thereof and waved his hat to the tug, but the line of vision between him and the tug was obstructed by the steel work of the bridge itself and the navigator of the tug never saw the bridge tender until after the collision.

When the tug and tow were below the bridge at a point where the top of the boom of Crane Barge

25 was about fifteen feet from the bridge the navigator first saw that the top of the boom was likely to strike the draw lift. Prior to that time it was not apparent that it would not clear. He reversed his engines, but notwithstanding this the top of the boom struck the draw lift, causing damage to both. The barge and the boom were without any motive power and were in complete control of the tug and lashed alongside of it.

5. That as a direct and proximate result of the negligence of Oregon-Washington Bridge Company and its bridge, Crane Barge 25, was damaged in the sum of \$3,306.11.

6. The Court rendered an oral opinion from the Bench, the transcript of which is here inserted and embodied in these Findings and made a part hereof. Said opinion is as follows:

“I do not find any negligence on the part of either the tug or the barge, and I find that the bridge was negligent in not maintaining an auxiliary whistle or some other signaling device not dependent upon the bridge’s power lines which could have been used in the event of a power failure or other emergency.

“The failure of the tug to signal the bridge to open the draw does not constitute negligence because the undisputed evidence shows that the bridge tender saw the tug and proceeded to raise the span when the tug was more than one-quarter mile from the bridge. The span was raised 13½ feet and then stopped.

"When the span was raised to that height, the tug proceeded slowly, believing that the span was high enough for it to proceed through it with safety. I find that the tug had the right to assume that the span was raised high enough and that it therefore had the right to proceed.

"I do not find that the bridge was negligent by reason of the fact that a power failure prevented it from raising the span higher, but I do find that it was negligent for failing to provide an auxiliary signal, not dependent upon its power supply, so that an oncoming vessel could have been warned in the event of a power failure or other emergency which rendered it dangerous for a ship to proceed. While it is true that the span had always opened without difficulty in the past, power failures had occurred on several occasions and an ordinary prudent bridge-owner could have reasonably anticipated that a power failure could have occurred during the lifting of its movable span.

"The bridge tender's attempt to signal the oncoming tow by waving his hat, while standing on the upriver side of the bridge next to the pilot house behind some steel girders, is commendable but, in the absence of having attracted the attention of the tow personel, does not relieve the bridge-owner of its obligation to maintain an adequate auxiliary signal, nor does it make the tow negligent for its failure to observe such hand signal. The presence of a

small red reflector which was unilluminated in broad daylight in the middle of the lift span did not constitute a warning to the tow, particularly when the evidence showed that the reflector, even when illuminated, did not turn green except when the span was raised to its full height and that the span had been so raised on only a few occasions during all of its years of operation.

“Russell Towboat and Moorage Co., respondent and claimant of the Tug “Lew Russell, Sr.,” is entitled to a judgment for costs against the Libelant, and Russell Family, Inc., claimant of the Crane Barge No. 25, is entitled to a judgment on its counterclaim against libelant for its damages in the sum of \$3,306.11, and for its costs.”

Conclusion

A decree should be entered dismissing the libel of Oregon-Washington Bridge Company, and awarding to Russell Family, Inc., damages in the sum of \$3,306.11, against Oregon-Washington Bridge Company, with interest at six per cent per annum from date of the decree, and both the Moorage Company and the Family, Inc., should recover their costs and disbursements from the Bridge Company.

Dated March 5, 1951.

/s/ GUS J. SOLOMON,
Judge.

Copy received:

/s/ ERSKINE WOOD,

/s/ H. LAWRENCE LISTER,

/s/ WILLIAM F. WHITE.

[Endorsed]: Filed Mar. 5, 1951.

In the District Court of the United States for the
District of Oregon

In Admiralty—Civil No. 5749

OREGON-WASHINGTON BRIDGE COMPANY,
Libelant,

vs.

TUG "LEW RUSSELL, SR." and CRANE
BARGE No. 25, in Rem,

and

RUSSELL TOWBOAT AND MOORAGE COM-
PANY and RUSSELL FAMILY, INC., in
Personam,

Respondents.

RUSSELL TOWBOAT AND MOORAGE COM-
Pany, Claimant of the Tug "Lew Russell, Sr.,"

and

RUSSELL FAMILY, INC., Claimant of Crane
Barge No. 25.

RUSSELL FAMILY, INC.,

Intervening Libelant,

vs.

THE HOOD RIVER-WHITE SALMON
BRIDGE, Its Gear and Paraphernalia, in Rem,
and

OREGON-WASHINGTON BRIDGE COMPANY,
Owner and Operator of Said Bridge,
Respondent.

FINAL DECREE

This cause came on for trial on January 25, 1951, in this Court before the Honorable Gus J. Solomon, Judge thereof, sitting in admiralty, and the Court having heard the opening statements of counsel, the testimony of the witnesses and oral arguments, and having made his Findings of Fact and Conclusions of Law, it is now

Considered, Ordered and Decreed that the libel of Oregon-Washington Bridge Company be and the same hereby is dismissed and that Russell Towboat and Moorage Company and Russell Family, Inc., each have and recover its costs and disbursements from Oregon-Washington Bridge Company and its stipulator, taxed at for the Russell Towboat and Moorage Company and for the Russell Family, Inc.; and

It Is Further Considered, Ordered and Decreed that Russell Family, Inc., have and recover from Oregon-Washington Bridge Company the sum of

\$3,306.11, without interest from the date of the collision, but with interest at six per cent per annum from the date of this decree, and that if said sum, with costs and disbursements as allowed, is not paid within 30 days of the date of this decree, execution issue therefor; and

It Is Further Considered, Ordered and Decreed that Russell Towboat and Moorage Company, and Russell Family, Inc., and their sureties, are all relieved from all obligations from such stipulations as they may have filed in this cause, either to abide and pay the decree or for costs, and the obligations of said stipulations are hereby cancelled.

Dated this 5th day of March, 1951.

/s/ GUS J. SOLOMON,
Judge.

Copies received.

[Endorsed]: Filed Mar. 5, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Tug "Lew Russell, Sr." and Crane Barge No. 25, and Russell Family, Inc., as Respondents, as Claimant, and as Intervening Libelant, and to William F. White, their Attorney, and

To Russell Towboat and Moorage Company and to Wood, Matthiessen & Wood, Its Attorneys:

You and each of you please take notice that Oregon-Washington Bridge Company, the Libelant

in the above-entitled cause, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the findings of fact, conclusions of law and decree made and entered in the above-captioned court and cause on or about the 5th day of March, 1951, and Libelant appeals from each and every part of said findings, conclusions and decree.

Dated this 4th day of June, 1951.

/s/ H. LAWRENCE LISTER,

GRAY & LISTER,

Proctors for Libelant.

State of Oregon,

County of Multnomah—ss.

Due service of the within Notice of Appeal is hereby accepted in Multnomah County, Oregon, this 4th day of June, 1951, by receiving a copy thereof, duly certified to as such by H. Lawrence Lister, of Proctors for Libelant.

/s/ WILLIAM F. WHITE, D. P.

Of Proctors for Tug "Lew Russell, Sr.," Crane Barge No. 25, and Russell Family, Inc., Respondents & Intervening Libelant.

/s/ LOFTON L. TATUM,

Of Proctors for Russell Towboat and Moorage Company.

[Endorsed]: Filed June 4, 1951.

[Title of District Court and Cause.]

PETITION FOR APPEAL

The libelant, Oregon-Washington Bridge Company, being aggrieved by the decree, conclusions and findings of the United States District Court herein claims an appeal from said decree, conclusions and findings made and entered on or about the 5th day of March, 1951, and prays that its said appeal may be allowed.

OREGON-WASHINGTON BRIDGE COMPANY,

By /s/ H. LAWRENCE LISTER,
Of Its Proctors.

State of Oregon,
County of Multnomah—ss.

Due service of the foregoing Petition for Appeal is hereby accepted in Multnomah County, Oregon, this 4th day of June, 1951, by receiving a copy thereof, duly certified to as such by H. Lawrence Lister, of Proctors for Libelant.

/s/ WILLIAM F. WHITE, D. P.
Of Proctors for Tug "Lew Russell, Sr.," Crane
Barge No. 25, and Russell Family, Inc., Re-
spondents & Intervening Libelant.

/s/ LOFTON L. TATUM,
Of Proctors for Russell Towboat and Moorage Com-
pany.

[Endorsed]: Filed June 4, 1951.

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

The libelant above-named having served and filed its notice of appeal and having petitioned the court for an appeal from the decree, conclusions and findings made and entered in this court and cause on or about the 5th day of March, 1951 and the court being fully advised

It Is Hereby Ordered that libelant's appeal be and the same hereby is allowed to the Circuit Court of Appeals for the Ninth Circuit.

Dated this 4th day of June, 1951.

/s/ GUS J. SOLOMON,

United States District Judge.

[Endorsed]: Filed June 6, 1951.

[Title of District Court and Cause.]

APPELLANT'S ASSIGNMENT OF ERRORS

The libelant, Oregon-Washington Bridge Company, hereby assigns error in the proceedings, decrees, orders and decisions of the District Court in the above-entitled action as follows:

First. The District Court erred in failing and refusing to sustain libelant's exceptions and objections to the findings of fact, conclusions of law and decree made by the District Court in this cause on or about the 5th day of March, 1951.

Second. The District Court erred in finding that the tug and tow came to a stop more than a quarter of a mile below the bridge owned and operated by libelant.

Third. The District Court erred in finding that the navigator of the tug rightly and justifiably believed that the bridge tender had raised the bridge high enough to enable the tug and tow to pass through.

Fourth. The District Court erred in finding that it is immaterial that no signal required by the regulations promulgated by the Corps of Engineers was given by the tug in that under the decisions the giving of the signal required by statute is a condition precedent to any assumption on the part of the tug operator that the bridge would be in readiness for his tug and tow to pass through.

Fifth. The District Court erred in finding that there had been power failures on at least three occasions prior to June 13, 1950, on the ground and for the reason that this finding is not consistent with the evidence.

Sixth. The District Court erred in finding that the line of vision between the tug operator and the bridge tender was obstructed by the steel work of the bridge upon the ground and for the reason that the exhibits in evidence and the testimony demonstrate that the bridge tender was clearly visible to the tug operator for a considerable distance and at least during the last three hundred feet traveled by said tug and tow prior to the impact with the bridge.

Seventh. The District Court erred in finding that the crane barge was damaged as a direct and proximate result of the negligence of libelant and its bridge.

Eighth. The District Court erred in incorporating in the findings of fact the opinion of the court set out in paragraph 6, pages 4 and 5, of the findings of fact.

Ninth. The District Court erred in making conclusions of law based upon the findings of fact and the District Court erred in making its decree based upon said findings of fact and said conclusions.

Tenth. The District Court erred in making its findings of fact, conclusions of law and its decree and each thereof in that each of said findings herein excepted to and the conclusions and decree based thereon are not supported by the evidence, but are contrary to the evidence and the law as applied to said evidence.

Eleventh. The District Court erred in failing and refusing to find that the collision and the resulting damages were caused by the failure of the tug and its operators to maintain a proper or any lookout, in proceeding at a speed which made it impossible to stop the tug and tow when the operator thereof became aware of the impending collision and in failing to keep the tug and barge under such control that it could have been stopped or otherwise maneuvered so as to have avoided colliding with the libelant's bridge and in failing and neglecting to give the signal required by the regulations and waiting thereafter until some affirmative evidence

had been furnished by the bridge or its tenders that the bridge was in readiness for the tug and tow to proceed.

Twelfth. The District Court erred in finding and decreeing that Russell Family, Inc., have and recover from libellant, Oregon-Washington Bridge Company the sum of \$3,306.11.

Dated this 6th day of June, 1951.

/s/ H. LAWRENCE LISTER,

GRAY & LISTER,

Proctors for Appellant.

State of Oregon,

County of Multnomah—ss.

Due service of the within Appellant's Assignment of Errors is hereby accepted in Multnomah County, Oregon, this day of June, 1951, by receiving a copy thereof, duly certified to as such by H. Lawrence Lister, of Proctors for Appellant.

/s/ LOFTON L. TATUM,

Of Proctors for Russell Towboat and Moorage Company.

/s/ THOMAS J. WHITE,

/s/ WILLIAM F. WHITE,

Of Proctors for Russell
Family, Inc.

[Endorsed]: Filed June 6, 1951.

[Title of District Court and Cause.]

BOND ON APPEAL STAYING EXECUTION

Know All Men By These Presents, That we, Oregon-Washington Bridge Company, and we, Fireman's Fund Indemnity Company, authorized to transact surety business in the State of Oregon, are held and firmly bound unto respondents and to Russell Family, Inc., intervening libelant, in the sum of \$250.00 and in the further sum of \$3,500.00 to be paid to the said respondents or to Russell Family, Inc., as an intervening libelant, their successors or assigns for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our successors and assigns, jointly and severally firmly by these presents. Sealed with our seals and dated the 7th day of June, 1951, and

Whereas, Oregon-Washington Bridge Company, libelant, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree, conclusions and findings of the District Court of the United States for the District of Oregon, bearing date of March 5, 1951, in a suit in which Oregon-Washington Bridge Company is libelant, the Tug "Lew Russell, Sr." and Crane Barge No. 25, Russell Towboat and Moorage Company and Russell Family, Inc., are respondents and Russell Family, Inc., is the claimant of said Tug "Lew Russell, Sr." and Crane Barge No. 25, and is an intervening libelant, which decree ordered libelant, Oregon-Washington Bridge Company to pay the costs of Russell Towboat and Moorage Company

and of Russell Family, Inc., and to pay to Russell Family, Inc., \$3306.11 with interest at the rate of six per cent per annum from the 5th day of March, 1951, and, whereas, Oregon-Washington Bridge Company, libelant, desires during the process of such appeal to stay the execution of said decree of the District Court:

Now, Therefore, the condition of this obligation is such that if the above-named appellant Oregon-Washington Bridge Company, shall prosecute said appeal with effect and pay all costs which may be awarded against it as such appellant if the appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States Court of Appeals for the Ninth Circuit in this cause, or on the mandate of said court by the court below, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

[Seal]

OREGON-WASHINGTON
BRIDGE COMPANY.

By /s/ ELBERT M. CHANDLER.

[Seal]

FIREMAN'S FUND
INDEMNITY COMPANY,

By /s/ B. JACOBS,
Surety.

State of Oregon,
County of Multnomah—ss.

Due service of the within Bond on Appeal Staying Execution is hereby accepted in Multnomah

County, Oregon, this 7th day of June, 1951, by receiving a copy thereof, duly certified to as such by H. Lawrence Lister of proctors for libelant.

/s/ LOFTON L. TATUM,
Of Proctors for Russell Towboat and Moorage
Company.

/s/ THOMAS J. WHITE,

/s/ WILLIAM F. WHITE,
Of Proctors for Russell
Family, Inc.

[Endorsed]: Filed June 7, 1951.

[Title of District Court and Cause.]

ORDER APPROVING BOND AND STAYING EXECUTION

Libelant having served and filed in this court and cause a supersedeas bond duly executed by libelant as principal and by the Fireman's Fund Indemnity Company, a corporation, as surety, and the court having considered the files and records herein, now therefore, upon oral application in open court and the court being fully advised,

It Is Hereby Ordered that the bond filed herein by libelant be and the same hereby is approved and that execution upon the decree in this court and cause be stayed during the pendency of the appeal

to the Circuit Court of Appeals of the United States for the Ninth Circuit.

Dated this 15th day of June, 1951.

/s/ GUS J. SOLOMON,

United States District Judge.

[Endorsed]: Filed June 15, 1951.

[Title of District Court and Cause.]

ORDER EXTENDING TIME
TO FILE APPEAL

Libelant and Appellant, Oregon-Washington Bridge Company, having moved the Court that it be granted an extension of time to and including August 25, 1951, within which to prepare and file its record in the Circuit Court of Appeals for the Ninth Circuit and the Court having considered the files and records herein and now being fully advised, advised,

It Is Hereby Ordered that libelant and appellant be and it hereby is granted additional time to and including August 25, 1951, within which to prepare and file its record on appeal in the Circuit Court of Appeals for the Ninth Circuit at San Francisco.

Dated this 10th day of July, 1951.

/s/ GUS J. SOLOMON,

District Judge.

[Endorsed]: Filed July 10, 1951.

[Title of District Court and Cause.]

ORDER TO SEND EXHIBITS
TO COURT OF APPEALS

It appearing that certain exhibits were received by the Court as a part of the evidence presented by the various parties at the trial of the above captioned matter and libellant having requested in open court that these various exhibits be made a part of the record on appeal to the United States Court of Appeals for the Ninth Circuit in San Francisco, and the Court being fully advised.

It Is Hereby Ordered that any and all exhibits offered in evidence by the various parties at the trial of the above-captioned matter and admitted by the Court at said trial be made a part of the record on appeal to the United States Court of Appeals in San Francisco.

Dated this 6th day of August, 1951.

/s/ GUS J. SOLOMON,
District Judge.

[Endorsed]: Filed Aug. 6, 1951.

[Title of District Court and Cause.]

DESIGNATION OF RECORD AND
PRAECIPE FOR APOSTLES ON APPEAL

To Lowell Mundorff, Clerk of the United States
District Court for the District of Oregon:

Request is hereby made that the record on appeal
in the above-entitled cause to the United States
Court of Appeals for the Ninth Circuit shall in-
clude the following:

1. Libel in Rem and in Personam;
2. Libelant's Stipulation for costs;
3. Claims of owners;
4. Answer of respondents and claimants;
5. Stipulation for costs;
6. Order that Erskine Wood has withdrawn as
Proctor for Russell Family, Inc., and Crane Barge
#25 and that T. S. White be substituted;
7. Stipulation for filing of Intervening Libel by
Russell Family, Inc.;
8. Order for filing of Intervening Libel by Rus-
sell Family, Inc.;
9. Petition and Intervening Libel in Rem and
in Personam by Russell Family, Inc.;
10. Intervening libelant's Stipulation for costs;
11. Answer of libelant to Intervening Libel filed
by Russell Family, Inc.;
12. Testimony taken on behalf of all parties, to-
gether with all exhibits of all parties admitted by
the Court;
13. Cost Bill of Russell Family, Inc.;

14. Libelant's exceptions and objections to the proposed findings, conclusions and decree;

15. Findings of fact and conclusions and final decree;

16. Respondent's cost bill;

17. Notice of appeal;

18. Petition for appeal;

19. Order allowing appeal;

20. Appellant's assignment of errors;

21. Bond on appeal;

22. Order proving bond and staying execution;

23. Motion and order extending time;

24. Designation of Record and Praecipe for Apostles on Appeal.

Dated at Portland, Oregon, this 19th day of July, 1951.

/s/ H. LAWRENCE LISTER,
Of Proctors for Oregon-Washington Bridge Company, Libelant.

Service acknowledged.

[Endorsed]: Filed July 19, 1951.

[Title of District Court and Cause.]

DOCKET ENTRIES

1950

Sept. 11—Filed Libel in rem and in personam

Sept. 11—Filed Libelant's stipulation for costs

Sept. 12—Issued 2 warrants of arrest and monition
to marshal

Sept. 12—Issued monition to marshal

Sept. 18—Filed monition with marshal's return

Oct. 28—Filed claims of owners

Oct. 28—Filed claimants' stipulation to abide by
and pay decree

Nov. 22—Filed answer of respondents and claim-
ants

Nov. 27—Entered order setting for pre-trial con-
ference Jan 2, 1951 & for trial Jan. 9, 1951

Dec. 8—Filed 2 warrants of arrest and monition—
executed

Dec. 22—Entered order that Erskine Wood has
withdrawn as proctor for Russell Family,
Inc., & Crane Barge #25 & that T. J.
White be substituted

Dec. 22—Filed & entered order cancelling stipula-
tion of Oct. 27, 1950 & allowing libelant
to proceed against barge

Dec. 22—Filed stipulation to abide by & pay the
decree, substituted for stipulation dated
Oct. 27, 1950

Dec. 27—Filed stipulation for filing of intervening
libel by Russell Family, Inc.

Dec. 27—Filed & entered order for filing of inter-
vening libel by Russell Family, Inc.

1950

- Dec. 27—Filed petition and intervening libel in rem and personam by Russell Family, Inc.
Dec. 28—Filed Libelant's stipulation for costs
Dec. 28—Filed praecipe for issuance of process
Dec. 28—Issued warrants of arrest and monition to marshal
Dec. 28—Issued monition to marshal

1951

- Jan. 3—Filed answer of libelant to intervening libel filed by Russell Family, Inc.
Jan. 5—Entered order striking from trial calendar of Jan. 9, 1951
Jan. 15—Entered order setting for trial on Jan. 30, 1951
Jan. 18—Entered order resetting for trial on Jan. 25, 1951
Jan. 25—Record of trial before court
Jan. 26—Record of trial. At close of libelant's case Resp. Crane #25 moves for dismissal & for non-suit. Taken under advisement. Resp. then moves for order allowing motion for non-suit to be withdrawn—order allowing motion
Jan. 26—Order allowing libelant to Feb. 5, to file brief. Resp. to Feb. 14, to answer and libelant to Feb. 20, to reply
Feb. 5—Filed libelant's memorandum
Feb. 12—Record of oral opinion
Feb. 13—Filed memorandum of cross-libelant Russell Family, Inc.

1951

- Feb. 16—Filed notice to tax costs
- Feb. 16—Filed cost bill of Russell Family, Inc.
(Costs taxed at \$30.00)
- Feb. 20—Filed libelant's exceptions and objections
to Findings, Conclusions and Decree
- Mar. 5—Filed and entered Findings of Fact and
Conclusions
- Mar. 5—Filed and entered Final Decree
- Mar. 5—Entered judgment in lien docket
- Mar. 5—Filed cost bill of respondent
- Mar. 19—Filed monition—unserved
- Mar. 19—Filed warrant of arrest and monition—
unexecuted
- June 4—Filed notice of appeal by libelant (served)
- June 4—Filed petition for appeal
- June 4—Filed and entered order allowing appeal
- June 6—Filed appellant's assignment of errors
- June 7—Filed bond on appeal
- June 15—Filed and entered order approving bond,
and staying execution
- July 10—Filed and entered order extending time
to August 25, 1951, to file transcript of
record

United States District Court, District of Oregon,
in Admiralty

No. Civ. 5749

OREGON-WASHINGTON BRIDGE COMPANY,
Libelant,

vs.

TUG "LEW RUSSELL, SR.," and CRANE
BARGE No. 25 in Rem,

and

RUSSELL TOWBOAT AND MOORAGE COM-
PANY, Owner, Tug and Barge,
Respondents.

PROCEEDINGS

Appearances

GRAY & LISTER,
H. LAWRENCE LISTER,
Attorneys for Libelant;

WOOD, MATTHIESSEN & WOOD,
ERSKINE WOOD,

Attorneys for Respondents, Tug "Lew Rus-
sell";

WILLIAM F. WHITE,
Attorney for Crane Barge No. 25.

The above-entitled cause came duly on for trial
before the Honorable Gus Solomon, Judge of the

above-entitled Court, on Thursday, the 25th day of January, 1951, beginning at the hour of 10:00 o'clock a.m., at the United States Court House, Portland, Oregon.

The proceedings follow:

The Court: Are the parties ready in the case of Oregon-Washington Bridge Company, Libellant, versus Tug "Lew Russell, Sr.," and Crane Barge No. 25 in rem, Russell Towboat and Moorage Company?

Mr. Lister: Libellant is ready, your Honor.

Mr. Wood: Yes.

Mr. White: Yes, your Honor.

The Court: Mr. Lister, are you ready to proceed?

Mr. Lister: Ready, your Honor. I would like to at this time add to that specification of negligence to Article IV, to the effect that the additional negligence in failing to sound any signal of any kind and particularly the signal required by Part 203 of the Bridge Regulations for the Columbia River applying to this particular bridge.

The Court: Have you got that specification written out?

Mr. Lister: I haven't written it out, if your Honor please.

The Court: Mr. Wood, any objection?

Mr. Wood: No, I don't think there is at this time.

The Court: All right, amendment may be allowed. Will you write it out and hand it to Mr. Wood and Mr. White and give me the original?

Mr. Lister: Yes. If your Honor please, the Oregon-Washington Bridge Company on June 13 and prior thereto, 1950, owned and operated a bridge across the Columbia River known as the Hood River-White Salmon Bridge. On the day before some representative [2*] of the Russell Towboat and Moorage Company called and told the operator of the bridge that equipment would be coming through around eight or eight or eight-thirty the morning of June 13th and asked them to be ready to raise the draw of this bridge. The drawspan is in the center or middle of the river, and I think it is some 264 feet long. The arrangements were made to open the bridge at the time specified, and the regular bridge tender, a Mr. Adams, called an electrician, a Mr. Benson, from Hood River who was ready to stand by and to render assistance, if any needed, in opening this draw at the time the tug and its tow showed up. It did not show up at the time indicated, but around eleven or eleven-thirty Mr. Adams saw the equipment coming up the river toward the bridge, and he called Mr. Benson from Hood River, and Mr. Benson came over to the bridge, Mr. Benson, the electrician.

When the tug and its tow was some quarter of a mile down the river these men started to do the preliminaries to lifting the drawspan and making way for the tug and its tow. Now one part of the tow was a crane barge which had a boom that extended some distance in the air, and this boom is the only part of the equipment that would not have gone

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

under the bridge in its normal position; however, everything went along as it was contemplated until the span had got up some 13 feet above its normal position when the bridge is in use for traffic, when, all of a sudden, without any warning to the operator of the bridge, [3] the power failed, the power being supplied by a Public Utility District on the Washington side of the river. Immediately on discovering there was no power to raise the bridge higher, Mr. Adams, the operator of the bridge rushed out and signaled to the oncoming equipment that—tried to stop them, but there was no change in the forward motion so far as could be ascertained from the bridge, and the tug and its tow came on, and the end of this boom struck against the supporting member on the down-side of the bridge, I think they call it the cord in technical terms, and damaged this cord and also destroyed some of the supporting members and put the bridge out of commission.

It would have taken very, very little lowering of this boom to have missed this bridge entirely. As we will show, it could have been lowered and gone under the bridge without raising the span at all, but, at any rate, the boom did run into the lower part of the bridge, and it eventually backed out, and after the power was restored the bridge was raised on up higher. In other words, there was nothing wrong with the equipment on the bridge of any kind even after this wreck, and as soon as the power was put back on, without any repair, I mean, any change in the bridge's equipment, the span was lifted. In other words, there was no failure or fault on any

of the bridge in any way that caused this stopping.

Now the larger part of the use of this bridge was by heavy equipment, sand and gravel trucks and what not, and after [4] the damage was done the bridge was soon put back in condition that light traffic could move back and forth across it, that is, passenger cars, home-loaded trucks, but during a period, I think, of 31 days or thereabouts, it was necessary to keep heavy traffic off of the bridge, loaded trucks and such so Mr. Chandler who is the President and chief stockholder in the Oregon-Washington Bridge Company had a check made, and to the best of his ability he estimated that he lost about \$100 a day in revenue—this is a toll bridge—while this bridge was unfit for use by heavy traffic. The temporary repairs have been made to the bridge at a cost of some \$3,811.13, and it is estimated that it will cost about \$23,710 to put the additional repairs to put the bridge back into its original condition or into the same condition it was before this accident happened. A large part of this cost is made necessary because they have to raise—they have to put something under the center of this lift span and bring it up to a little additional height or hold it a little higher than it is at the present time in order to put what they call the necessary camber in this bridge. Now the camber is that, as I understand it, is the name for a little arch that is necessary to be carried in a bridge, particularly a bridge of this length and description, in order to make it safe for use and sufficiently strong to serve its purpose.

So we are asking here that the Company recover

moneys put out on these temporary repairs and for the loss of use and [5] for the additional cost of putting the bridge back into the condition it was prior to this accident, which, we contend, was caused by the negligence of the operator of the tug in not seeing that the bridge was high enough that it would clear his equipment before he went under and in moving up river, as far as we could see, without any decrease in speed and in not having his equipment under control and failing to lower this derrick and in failing to give the signals.

The Court: When should he have lowered the derrick?

Mr. Lister: What is that, please?

The Court: When should he have lowered the derrick?

Mr. Lister: Well, as far as we are concerned, at any time before he came to the bridge.

The Court: Isn't that precisely the reason why be notified the bridge that they were to lift the span?

Mr. Lister: That's right.

The Court: That the derrick was high, was not lowered?

Mr. Lister: That's right.

The Court: Well, you state it was negligence on him to call the bridge——

Mr. Lister: Well, your Honor, unless he was willing to wait there until he got an affirmative signal to come on, that the bridge was high enough to clear it, if he didn't want to do that, if he wanted to come through there and take his chances, then he could have done it by lowering this boom and have

gone [6] under this bridge without having the bridge removed from its original position. If he was going to take the chance of coming on up this river without having an affirmative signal from the bridge that there was safe clearance, then he should have lowered the boom, which he could have done, and gone under the bridge without having it moved from its original position, or it would have easily cleared the bridge in the position it was at the time of the accident.

The Court: Just as a matter of interest, do they pay anything for having the bridge opened?

Mr. White: No, I think not.

The Court: You may proceed.

Mr. Wood: Mr. Lister stated the case substantially, and I will add a few comments. The owner of the bridge, apparently, did not maintain a bridge tender constantly there so the practice is when any navigator or towboat company wants to go through the bridge they give notice in advance, 12 hours notice in advance, and then the bridge owner has his bridge tender come out on the bridge and take a position there and be ready to open the draw as the two approaches of which he has been notified. Now that was all done in this case. The towboat company gave 12 hour notice in advance from Vancouver where its headquarters were that it would be coming up the river with this tow, and so the bridge tender whose name was Adams was out on the bridge expecting the tow and was ready there as it [7] approached.

When the tug and the tow got within a quarter

of a mile downstream from the bridge—this is the White Salmon-Hood River Bridge—it stopped its engines and waited there until the bridge tender lifted the draw. The bridge tender did lift the draw, and the draw came to a stop, as it now turns out later, due to this power failure. But, of course, the people on the tug and tow didn't know that. They assumed when it came to a stop the bridge tender, in his judgment, had lifted it high enough and it was safe for them to come on; therefore, the bridge lift now having been raised and come to a stop, and, apparently, the man on the boat thought it was plenty high enough to go under because it's not easy for a man lower on the water on a small tug to judge nicely whether the bridge is exactly high enough or not. He is at a distance of a quarter of a mile away and is looking up toward it, but he is not looking at it on a level where he can measure it nicely, and he doesn't have the opportunity because of that difference in there, so it is up to the bridge tender on the bridge to make that judgment, and when he lifts the draw and comes to a stop the vessel has the right and assumes it is all right to come on.

That is what happened here. The tug and tow, having seen the draw lifted and come to a stop, then proceeded slowly up at a speed of perhaps a mile and a half an hour through the draw, and they almost went through the draw. I was glad to hear Mr. Lister say that if we had lowered this derrick just a little [8] bit we would have gone through safely because the converse of that is that if they

had raised the draw lift just a little bit more we would have gone through safely, and the man on the boat couldn't judge until the accident practically happened that the draw was not high enough. It was so narrow a margin that it looked to them perfectly safe to proceed, which they did.

Now the derrick was at an angle, and it had a reel on the end of it, and it hit the railing of the bridge and rode up over the bridge a little way and did some damage, but I mention that to show how narrowly it was to clearing it entirely. It hit the railing of the bridge and rode up a little. The bridge had been raised—well, I don't know really, that's up to the judgment—but I think three or four feet more, everything would have been all right. I make mention of that again to show that the tug cannot be held to nicely judge whether it can go under or not. That is up to the bridge man.

Now I didn't make any objection to Mr. Lister's belated amendment here charging the tug with negligence for not blowing the whistle to the bridge as required by regulations because the only purpose of the whistle is to ask the draw lift tender to lift his draw. That is all it is for. Of course, that is immaterial here because the bridge tender saw the tug waiting for the draw to be lifted and lifted it, so that is clearly of no moment. Mr. Lister also said that we should have waited for some signal, some whistle from the bridge that it was safe to [9] proceed, or some signal of some kind. There is nothing in the regulations that requires that, and the rule of law is, as I have stated, that when the

bridge is lifted and comes to a stop the presumption is it is safe to go through, and the tug is entitled to rely on that presumption.

Now, I think that is in brief our case. Well, I should explain a little more the three-party relationship here. The bridge is suing the tug and the barge and their owners for \$31,000 damages. I represent the tug only. I do not represent the barge or its owners. I represent the tug and its owners. Mr. White represents the barge and its owners. Now, as far as my client is concerned, I am not asking damages of anybody. I am merely resisting Mr. Lister's claim of damages against my client; therefore, as far as my client is concerned, it is immaterial to me whether this is held to be a case of no negligence on our part or an inevitable accident. I think, however, it is plainly a case of negligence on the part of the bridge, under all of the authorities, and on that phase of it Mr. White will press a claim for damages against the bridge because his barge was damaged through the fault of the bridge. Do you wish to say anything?

Mr. White: Just a little comment.

Mr. Wood: Yes, I think that's all we have to say at this time. Mr. White has something.

Mr. White: If the Court please, I concur in Mr. Wood's [10] statements, generally, on the liability and the factual situation. I want to state that the owner of the Crane Barge 25, is the Russell Family, Inc., who is the intervening libelant here and who is claiming from the bridge approximately 33 or 34 hundred dollars for damages. I might say

that Crane Barge 25 is an LSM type vessel with the engines removed and is a steel barge on which there has been erected a large crane, and in the course of this journey up the river on top of the deck of Crane Barge 25 was a little landing craft called the Laura Louise, and it was a little self-propelled ramp type barge or craft being taken up to McNary Dam together with the LSM crane barge for use by the contractors up there.

The landing craft was as cargo on top of the crane barge 25, and the boom was lowered within two inches from striking this cargo, that is, this landing craft, and secured there, and our position on liability is identical with Mr. Wood's position. We have sued the bridge only for the reason that in our investigation of the facts there is negligence there, and we are entitled to recover.

The Court: Call your witnesses.

Mr. Lister: Call Mr. Adams. [11]

OSCAR HERMAN ADAMS

called as a witness in behalf of the plaintiff, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lister:

Q. Where do you live, Mr. Adams?

A. Hood River.

Q. What are you doing now?

A. I am toll collector on the Oregon-Washington Bridge at Hood River.

Q. What were you doing in June, 1950?

(Testimony of Oscar Herman Adams.)

A. Collecting toll on the bridge.

Q. How long had you been doing that type of work prior to June, 1950?

A. Oh, better than two years.

Q. What hours did you work, Mr. Adams?

A. Well, I was working from six in the morning until two in the afternoon.

Q. Who else—did you have any other one working on the bridge?

A. Yes, there was four of us working three different shifts.

Q. What are the facts as to whether or not there was an attendant there 24 hours a day?

A. That's right.

Q. Now do you remember this occasion when this accident happened?

A. I do. [12]

Q. That has been described here?

A. Yes, sir.

Q. The information given that the equipment was coming up the river was given to you personally or to some of your fellow workers?

A. No, it was given to me personally.

Q. What did you do?

A. Well, about eight o'clock, I should judge, in the evening, of the 12th of June they called me from Vancouver that they were, that there was a boat coming through, this Russell Towboat Company was coming through with a boom on a barge, and they didn't think I had quite clearance enough to get under the bridge and wanted to know if I

(Testimony of Oscar Herman Adams.)

could have it up about eight or eight-thirty in the morning.

Q. Were you on duty at that time?

A. I was.

Q. I thought you said you worked——

A. No, when they called me they called me at my home.

Q. I see. Why did they call you rather than the man who was on duty?

A. They possibly called there, and then they told them to call me.

Q. Oh, I see. All right then, what did you do then, Mr. Adams?

A. Well, instead of at eight-thirty to come through, it was possibly eleven when I saw them coming, oh, from a mile and a [13] half to two miles down the river.

Q. What did you do then?

A. I called Mr. Benson, the electrician.

Q. Who, please? A. Mr. Harold Benson.

Q. Where was he?

A. He was at his home.

Q. Where was that?

A. It is possibly a mile out of Hood River south.

Q. All right, what was his connection with the bridge?

A. Well, he got there, I should judge he got there when they were within, oh, three-quarters or half a mile from the bridge.

Q. All right, what was his connection with the bridge? Why did you call him?

(Testimony of Oscar Herman Adams.)

A. Well, we always had him stand by as he was an electrician, in case of trouble so we——

Q. When had you last raised the bridge prior to June 13, 1950?

A. On a Sunday before the accident happened we raised the bridge for a trial test.

Q. I believe June 13 was on a Tuesday. Would that be——

A. That's right.

Q. And Sunday would be the 11th; is that correct?

A. That's right.

Q. Was Mr. Benson present when the bridge was raised? On June 11th? [14]

A. That's right, yes, sir.

Q. What is the fact as to whether or not Mr. Benson has been present on other occasions when the bridge has been raised or lowered?

A. Yes, sir, we generally always call him, always do.

Q. Can you tell us about how long this liftspan was, Mr. Adams?

A. How long it is?

Q. Yes?

A. Oh, it must be—I wouldn't know. I would just have to guess at it. I wouldn't know exactly.

Q. Describe to the Court what is the——

The Court: Have you got some pictures? Let's see the pictures.

Mr. Lister: What is that, your Honor?

The Court: You have got some pictures there?

Mr. Lister: I would like to have these marked.

(Thereupon, photographs were marked Libellant's 1 through 11 inclusive for identification.)

(Testimony of Oscar Herman Adams.)

The Court: Any objection to those pictures, Mr. Wood?

Mr. Wood: No, I don't think so. I have not looked at them yet.

The Court: All right.

Mr. White: When was this picture taken, Mr. Lister, when they proceeded, when the second half of the bridge was repaired, or was this right after the accident, or what? [15]

Mr. Lister: This was right after the accident.

The Court: Which picture are you referring to, Mr. White.

Mr. White: Exhibit 1 for identification.

Mr. Wood: There is no objection to them.

Mr. White: Do you have an extra copy of that large one, Mr. Lister?

Mr. Lister: We have one very much like it, Mr. White. I am not sure it is identical.

The Court: Mr. Lister, the witness has the pictures. You may proceed.

Q. (By Mr. Lister): Mr. Adams, will you describe—where is the toll house on the bridge.

A. It is in the center of the drawspan.

Q. Does it show on some of those pictures there?

A. Yes, sir.

Q. Could you look at the number on one of them and show where it is?

A. No. 8, Exhibit 8.

Q. Does that show the toll house?

A. Yes, sir, that shows the toll house.

Q. Where did you stay with regard to the toll house? A. Where did I stay?

(Testimony of Oscar Herman Adams.)

Q. Yes, would you stay there, normally be there when you were working on the bridge?

A. That's right. [16]

Q. When Mr. Benson came to the bridge on the morning of the accident, where were you then?

A. I was in the toll house.

Q. What did he do?

A. He went across the bridge on the Washington side and turned around, but he didn't turn on the bridge, and parked his car just off the span on the north side of the span.

Q. Then what was done?

A. He came over to the toll house and I says, "Well," I says, "they are getting pretty close. We might just as well start to raising the span." He says, "Okeh," and so I went to the west end of the span, and he went to the north and untied the ropes that held the cables to keep the wind from whipping them against the bridge.

Q. When you said that you went to the west end and he went to the north, if he went to the north wouldn't you be going to the opposite end or to the south? A. Yes, I went to the south.

Q. Would you tell the Court a little bit more what you mean by—what are those cables that you mentioned?

A. Well, they are—I should judge they are wire, the cable that runs from the bottom of the span, and they hang in a loop, and the wind whips them back and forth, and we tie them with ropes to keep them from whipping against the bridge.

Q. Aren't those the electrical equipment? [17]

(Testimony of Oscar Herman Adams.)

A. I think they are.

Q. That carry the current?

A. That's right.

Q. Then what else did you do; what is the next thing you did?

A. Well, I went over, and he run on up into the control house.

Q. Where is the control house?

A. We lowered the gates first.

Q. What is that?

A. Put the signal out, lowered the gate to stop the traffic, or I did that before we went out of the toll house.

Q. How do you do that, Mr. Adams?

A. Oh, there is controls there in the toll house that does that, levers.

Q. You have electrical switches, don't you, that you engage? A. That's right.

Q. And those switches cause a sign to come down on each end of the—or of the liftspan?

A. Yes, sir.

Q. Warning traffic, and then you have other switches that put the gate down on each end?

A. That's right.

Q. Now are those the ones you are referring to?

A. That's what I was referring to, yes.

Q. You say those are operated from the toll house? A. From the toll house. [18]

Q. Did you throw those switches before you went out and untied these ropes, or afterwards, or do you remember? A. Before.

(Testimony of Oscar Herman Adams.)

Q. Then when you came back where did you then, where did you go then?

A. We went up into the control house upstairs.

Q. Where is the control house?

A. It is possibly 25 or 30 feet up just off of the span on the Washington side, on the north end of the span.

Q. To me then that would be the northerly side of the bridge; am I correct? A. That's right.

Q. And with regard to the deck of the bridge, where is this toll house? Is it level with the deck of the bridge, or is it—— A. The toll house?

Q. Yes,—I mean the control house.

A. Yes, it's level with the bridge span, not on top. It is probably 25 or 30 feet above the toll house. There are steps to go up there to it.

Mr. Wood: Is there a picture of it?

The Witness: I don't think there is. No, there is no picture of the control house here. No,—yes, there possibly is here in this large one. Yes, you can see it.

Mr. Lister: Referring to exhibit number what?

A. No. 1. [19]

Mr. Wood: I am talking about the control tower, not the toll house. Does that picture show?

The Witness: The one at the end is the control house, the one that you see up off of the roadway.

Mr. Wood: Go ahead.

Q. (By Mr. Lister): You say it is some 25 feet above the——

(Testimony of Oscar Herman Adams.)

A. I should judge 25 or 30 feet above the roadway.

Q. All right, then did you go up there—did Mr. Benson go up there, too? A. Yes, sir.

Q. Did you both go up there at the same time?

A. That's right.

Q. What did you do now from up there?

A. Well, there was a couple of ropes up there we had to untie. He untied one, and I untied the other. Then we went into the control house.

Q. What is located in the control house?

A. That's where the switches are to raise the bridge, the controls.

Q. Switches, what do the switches relate to, Mr. Adams?

A. Well, the first thing we do, we turn the power on.

Q. Do what?

A. There is a power switch. We turn that on, and there is a light there that lights up when it comes on, and then there is another switch we switch to bring out the interlocks. [20]

Q. To do what?

A. To bring out the interlocks. There is interlocks that holds the bridge after it is down, and there is a motor that brings those out so we can raise the span.

Q. As I understand, your interlock is a device that goes from the stationary part of the bridge into the liftspan on each end and holds it solid when it is in a stationary position?

(Testimony of Oscar Herman Adams.)

A. That's right, yes, sir.

Q. You say those interlocks were removed by means of a motor? A. Yes.

Q. Which is controled from the switch in the control house; is that what you said?

A. That's right.

Q. Then what did you do?

A. Well then, we—then I throwed the switch, the lever there. There is a lever there that you, that niches in with the knob on it that you can bring it up as fast as you want to that has just four or five speeds there, and you would start first notch until it starts raising. Then we let it sit there until the bridge is up and it's up to where we want it.

Q. I think you described it as being something like an old control on a street car?

A. Streetcar, that's right.

Q. You operate it much the same way as the motorman with the old streetcars? [21]

A. That's right.

Q. Now, what, if anything, is there there to indicate the manner in which the machinery is operated, Mr. Adams?

A. Well, there is a screw there, a picture of a bridge that shows if the bridge is out of tilt, and there is other instruments there to tell you the height of the bridge. I think that's all.

Q. Do you know how the bridge is raised? It is my understanding there is a motor to raise each end of this liftspan; am I correct in that understanding?

A. That's right, yes, sir.

(Testimony of Oscar Herman Adams.)

Q. Do both of those motors operate off of the same switch?

A. Yes, sir, no, I don't know now about the—I couldn't tell you.

Q. Well, you only had one control for it to move, as I understand it, in order to start the bridge raising?

A. That's right, just one control.

Q. From the normal position into the air, is that correct?

A. Yes, that's right.

Q. All right. You said there were certain indicators there. Did any of those indicators show anything abnormal in the movement of the bridge at all?

A. Not a bit.

Mr. Wood: Will you speak a little louder, please?

The Witness: Yes, sir, no, there was nothing there to indicate [22] that anything was wrong whatever.

Q. (By Mr. Lister): You have described that there is a device which shows you whether the bridge is coming up on level or whether one end is higher than the other; is that correct?

A. Yes, sir, that's correct.

Q. Then how high did the bridge go before anything out of the ordinary happened, Mr. Adams?

A. Well, I think the indicator said 13 and a half feet, to be accurate.

Q. And, in the meantime, what was this equipment doing, this tug and its tow?

A. They was coming right along up the river.

(Testimony of Oscar Herman Adams.)

Q. You say that you first saw them a mile and a half or two miles away?

A. Yes, sir, when I first saw them.

Q. From that time on were you conscious of the position of this equipment until the accident happened? A. I was.

Q. Did you at any time see any evidence that the speed of this equipment was changed or accelerated or decreased?

A. From where I was at I couldn't tell if there was any difference. It was moving right along.

Q. Will you describe—did you see a wake?

A. I could see the waves, yes, from the front end of the barge.

Q. Did that decrease at any time? [23]

A. Not that I noticed, not once.

Q. Now can you tell us about where this equipment was when the bridge stopped moving upward, when the liftspan stopped moving upward?

A. Yes, I should judge around from four to six hundred feet from the bridge.

Q. Four to six hundred feet? A. Yes.

Q. What did you do then?

A. Well, we tried to work the switches there to see what was the matter, and the power was off, and I tried to blow the whistle to stop the barge, and it wouldn't blow, so I ran outside and waved and hollered, but evidently, he never saw me. I could see him, but he didn't see me. There was some bridge members there that it was pretty hard or impossible to see me, but if he had looked he could have saw me, but he didn't because I could see him looking

(Testimony of Oscar Herman Adams.)

up and watching the end of the boom.

Q. How many men were there on this equipment?
A. Two that I saw.

Q. When you say you ran out, where did you go? Can you show on one of those exhibits, one of those pictures, where you went when you tried to give a signal?
A. I don't think——

Q. Is that one that is the picture of the control? Could you [24] show on that where——

A. I couldn't. I can tell you just about, but I couldn't——

Q. Well, with regard to being up or downstream, is that control on the downstream side or the upstream side of the bridge? Is the control tower on the downstream side or the upstream side, or is it right in the middle of the bridge. Where does it set?

A. I would say it sets right across the bridge, right lengthways across the bridge, the control house does, on the north side.

Q. It goes across entirely the full width of the bridge; is that it?

A. That's right, yes, sir.

Q. Well now, where did you go and where were you standing when you were signaling to this equipment that the bridge was stuck?

A. I was on the east end of the, of this here control house. There is a platform, and you can walk out, and I couldn't go around the other way on account of it was dangerous. There was wiring around there. I didn't really have time to run clear

(Testimony of Oscar Herman Adams.)

around the other side if I could have got around, and I waved there from that platform on the upstream side of the bridge.

Q. Well, would the control house be between you and the operator of the tug?

A. Well, it would be, but I was—the platform was far enough out there so that you could get out far enough so that you could see down the stream of the river.

Q. Which side is it, north or south, where this platform is? [25]

A. It would be on the south side.

Q. That is the Oregon side?

A. Well, the platform is on the east side, but it extends out on the south side of the building far enough there, oh, four or five, six feet.

Q. So that where you were standing was a platform?

A. That's where I was standing when I waved and hollered.

Q. What did you wave? A. My hat.

Q. What part of the tow came in contact with the bridge, Mr. Adams?

A. The end of the boom lacked about five or six feet of clearing or of going under the bridge.

Q. Where did it hit the bridge?

A. It hit it just right at the north end of the toll house, just missed the toll house. It scraped it.

Q. The toll house, that's on the downstream side of the bridge, is it, you said?

A. That's right, yes, sir.

(Testimony of Oscar Herman Adams.)

Q. What part of the bridge was involved now and what received the brunt of the blow?

A. Well, this boom going east, it was sloped like this (indicating), and it just went over the railing of the bridge, and with the weight, the speed he was going, it shoved the boom right under the —over the railing and clear across the bridge [26] under the members on the other side, and the weight of the barge pushing up against there made a pry out of this boom, and it just snapped those steel girders, whatever you call it, snapped them off like they was toothpicks.

Q. What did it do to that main supporting member? I think you called it a cord on the downstream side?

A. Well, it bent that, kind of cracked it underneath there, weakened it considerably.

Q. How did they disengage this equipment from the bridge?

A. How did they disengage it?

Q. How did they get it loose from the bridge?

A. Well, they had quite a little time. There was a big block on the end of this boom, I suppose it is to weight it down, and an enormous big block. It had come unhooked and dropped down, and they had quite a time pulling back. Of course, to get the barge, to get the thing loose, kind of wedge in there, but they finally pulled it back, and the block had done considerable damage. When it come up it bent a lot of things, those tubings they had that the wiring runs through.

(Testimony of Oscar Herman Adams.)

Q. How long was it until they get the crane disengaged from the bridge?

A. Oh, it was possibly ten minutes before we got the thing cleared up.

Q. You have seen that picture that is now marked for identification No. 1. Does that show the equipment the way it stood after it [27] pulled off?

A. Yes, sir, after it pulled off.

Q. Yes? A. Yes, sir.

Q. What did you do then to determine what had caused this bridge to stop moving?

A. I think Mr. Benson, the electrician, called the—he checked things over. He said, "There is no power," he says, "the power is off." So I think he looked, checked the fuses there in the control house, and they were all okeh, and so he called the PUD at White Salmon, Klickitat County, and told them the power was off the bridge.

Mr. White: I object to this testimony unless it is shown that this man was present. This may be something Mr. Benson told afterwards. I am not clear. Was it at the scene?

The Court: Is there any dispute about the fact that the power was off?

Mr. White: We don't know.

Mr. Wood: We don't know.

Mr. White: We require them to prove it.

The Court: Objection is sustained to this. Is Mr. Benson here?

Mr. Lister: Yes, he is here, your Honor.

Q. (By Mr. Lister): What did you do, Mr.

(Testimony of Oscar Herman Adams.)

Adams, I will ask you what did you do, what was done there in your presence toward determining what caused the—— [28]

The Witness: After the accident?

Q. Yes, at any time.

A. Well, I crawled out over the bridge, went down, helped get this block off and then came back up and then it was one o'clock before the power was turned on again, before they got to put a fuse in over at the plant or where it had blowed out.

Q. What is the fact as to whether or not at any time any of the equipment at or near the bridge was found to be out of order in any way?

A. The bridge, no, there was nothing wrong with the bridge, only——

Q. You say at one o'clock the power was restored? A. That's right.

Q. What did you do then?

A. We lowered the bridge and let traffic through. The bridge went down normally, and we let traffic through, and after that cleared up I sent or telephoned over to the Nichols Boat Works and had them send a boat over to the barge where they had tied it at the moorage, told them to come on through, raised the bridge. I raised the bridge 30 feet, and they went under.

Q. Did you do anything at all in the way of repairing or renewing any of the apparatus on the bridge or connected with the bridge?

A. Nothing.

Q. Did you lower this bridge, this span, into

(Testimony of Oscar Herman Adams.)

position without [29] changing of the wiring or the switches or fuses or anything in connection with the bridge? A. Yes, sir, I did.

Q. Did you make the lift without having changed or renewed any of the equipment on the bridge?

A. No, sir, nothing was changed at all.

Q. You said, "No, sir." Do you mean that you didn't—did you have to change anything before?

A. No, sir, nothing.

Q. Did the bridge raise without any difficulty of any kind? A. It did.

Q. Now, during the time you have been working on the bridge had you ever at any time had any trouble lifting the span? A. I never did, no.

Q. What was the occasion for raising it on the Sunday before this accident happened?

A. Well, for a test. We always raised it at least once a month to test, to see that it would operate freely.

Q. Who was present when the test was made on the Sunday prior to June 13th?

A. Mr. Benson, Harold Benson.

Q. Do you always have him come down when you make a raising or lowering of the bridge?

A. We do, yes, sir.

Q. Did this vessel give any signal of any kind as it came up [30] toward the bridge?

A. No, sir.

Q. What, if any, lights are there on the bridge, Mr. Adams?

(Testimony of Oscar Herman Adams.)

A. Well, there is a light on each end of the span down on the concrete pier.

Q. What do you call it?

A. A red light on each end of the bridge at the concrete pier and then there is also a red light in the center of the bridge.

Q. Were those lights operating on that day of this accident?

A. They were operating until the accident happened.

Q. Well, were those lights controlled by the same current and fed the same current that lifted the span? A. Yes, sir.

Q. Until the current went off then would there be a red light showing to traffic moving up the river? A. Until, yes.

Mr. Wood: What?

The Witness: There would be a red light showing, yes.

Q. (By Mr. Lister): Until the power went off?

A. That's right.

Q. When the power went off you estimated this equipment was some four to six hundred feet downstream; is that right? A. Yes, sir.

Q. What would be your estimate of the speed at which it was moving at that time, Mr. [31] Adams?

A. Well, not familiar with the boats on the river, it would be pretty hard for me to estimate the speed he was coming, but I would say——

(Testimony of Oscar Herman Adams.)

Mr. Wood: I object to him estimating. He just said he was not qualified.

Mr. Lister: He didn't say he was not qualified.

Mr. Wood: He said it would be hard for anybody.

The Court: He said he is not familiar with the speed of boats on the river.

Mr. White: Then he is in no position to express an opinion, your Honor.

The Court: I think that's right. Objection sustained.

Q. (By Mr. Lister): Could you tell, Mr. Adams, about how much time elapsed from the time you noticed this equipment four to six hundred feet downstream until it hit the bridge?

A. Well, I would say not over two minutes.

Q. Do you know whether this derrick boom was lowered after the—was disengaged from the bridge there, Mr. Adams?

A. It was.

Q. How much did they lower it?

A. Oh, I would say they lowered it 10 or 15 feet after they backed off.

Q. Now what do you know about the movement of traffic—this accident happened on the 13th of June, didn't it?

A. Yes, sir. [32]

Q. And was the bridge—strike that—what, if any limitations were put on the traffic and use of the bridge subsequent to this accident?

A. You mean the amount of traffic?

Q. Did you let all types of traffic go back and forth across the bridge?

(Testimony of Oscar Herman Adams.)

A. No, we had to stop trucks, heavy trucks.

Q. How long did that continue?

A. Oh, I would say before we got it, probably 40 or 50 days, somewhere around in there, I wouldn't know exactly, but it was quite a while, I know, before we got it fixed.

Q. In fact, you didn't let loaded trucks go over there until the repairs had been made; is that correct?

A. No, no loaded ones or empty either.

Q. Did you make any effort to ascertain how many trucks were prevented from moving back and forth across the bridge?

A. I did our regular customers, yes, sir.

Q. Can you tell us what you found?

A. Well, there was a sand and gravel truck, Leadbetter sand and gravel trucks. He run three trucks across there, hauls sand and gravel, and we had to stop his outfit, and there was the dairy, two or three trucks of the dairy, Mayflower Dairy Company, went across. We had to stop them, and we had signs at each end to stop a lot of trucks that I had no way of record, I hadn't any record at all.

Q. Didn't you make an estimate and submit it to Mr. Chandler? [33]

A. I did, sir.

Q. At the time of about how many you figured that had—how much traffic you lost during the time the bridge was under repair?

Mr. Wood: I am going to object to this, your Honor, for this reason. He has mentioned two or three trucks of the Leadbetter Company, two or three trucks of the Dairy Company, and then he

(Testimony of Oscar Herman Adams.)

just said he had no way of keeping a record or estimating what other miscellaneous trucks might have crossed or not crossed. He just said he had no way of doing it.

The Court: Mr. Lister, I think that might be admissible if you could come in on a proper showing. You have not made that kind of a showing.

Q. (By Mr. Lister): You did, didn't you, at Mr. Chandler's request, try to estimate how many trucks? A. I did.

Q. Loaded trucks were stopped from going back and forth, and when you speak of those Leadbetter trucks, did they cross more than once during the day?

A. Oh, yes, they crossed sometimes, sometimes they crossed and paid \$40.00, \$50.00 in on the bridge a day.

Q. What do you charge for trucks?

A. Well, Leadbetter's trucks were a dollar a crossing each way.

Q. Whether they were loaded or empty?

A. Yes, sir. [34]

Q. And as I understand it, they did cross empty, and you saw them, didn't you? A. Yes, sir.

Q. And they didn't come back loaded, and you knew that if the bridge had not been restricted in use they would have come back; isn't that right?

A. We didn't allow them even to go across empty.

Q. Well then, how did you know—did you base that on what they had been doing?

(Testimony of Oscar Herman Adams.)

A. What they had been doing before the accident happened.

Q. I see, and prior to the time the accident happened these Leadbetter trucks would make from 30 to 40 trips back and forth across the bridge?

Mr. Wood: Oh, no, he said sometimes.

Mr. Lister: Well, you said 30 to 40 times; didn't you?

The Witness: I said sometimes it would run as high as \$50.00 a day we would take in from their trucks.

Q. (By Mr. Lister): All right, well then, what would be the average—what did you use in estimating the loss of use to Mr. Chandler?

A. Well, I just averaged up the crossings that they made previous to this accident.

Q. Well, was it the kind of work which they had been doing throughout the week that would take them back and forth substantially the same amount each day? [35]

A. Practically the same, yes.

Q. Just tell the Court what kind of work they were doing and what were they hauling?

A. They were hauling, they had their gravel pit and sand pit over on the Washington side, and they would go over there and haul it over to their mixer on the Oregon side.

Q. Was that a comparatively steady traffic back and forth?

A. That is steady business on the bridge, yes.

Q. Now you say that would run from 40 to 50

(Testimony of Oscar Herman Adams.)

dollars a day on the average? A. Yes, sir.

Mr. Wood: No, he didn't say that.

Q. (By Mr. Lister): What did you say?

A. I said it would run around \$50.00 a day.

Mr. Wood: If your Honor please, I want to object to that and call your Honor's attention to what he said before. He said it would go as high as 40 to 50 dollars a day. He was stating the maximum.

The Court: I am going to let it in, but I just want to say now that much of this testimony is absolutely immaterial, and some of it should have been agreed upon prior to the time that we came into court. I am just serving notice on you that this is the last time I am ever going to permit you to come into court without a pretrial order if this type of testimony is to come in because I don't like it. [36]

Mr. Lister: I am willing to do that, your Honor.

The Court: This is a matter that should have been agreed upon before.

Mr. Wood: Well, if your Honor please, I think I ought to state in justice to Mr. Lister we did have a pretrial conference, and the two of us, we couldn't agree on these damages because we didn't think they had the proof to substantiate it so we couldn't agree on it.

The Court: But, certainly, you can agree, Mr. Wood, as to whether or not there was a power failure. It would have been a very simple thing to call up PUD at White Salmon and find out at that time if the power had failed.

(Testimony of Oscar Herman Adams.)

Mr. Wood: I don't think there will be any dispute about that, your Honor.

The Court: Or as to whether or not the bridge was in good shape prior to the time and at the moment the power went out. That has been what the witness has been testifying to practically his whole time.

Mr. Wood: There is no dispute about the power failure. In fact, in our answer we admit it.

The Court: Mr. White insisted upon the evidence going on because he says, you are putting them on proof.

Mr. Wood: Well, Mr. White overlooked that. We have admitted it.

Mr. Lister: Well, Mr. Wood, are you—if your Honor please, [37] we have estimated that there was a hundred dollars a day for loss of use on this bridge, and we want to put on evidence to prove that, if they won't stipulate as to that some or some comparative figure.

The Court: Mr. Lister, you have not shown a basis for which this man can make an estimate.

Mr. Lister: If your Honor please, all he can show is what traffic went across from time to time and what didn't go across during the time the bridge was under repair. That's all he can show. It seems to me he was there, weren't you there all the time, Mr Adams?

The Witness: Yes, sir.

Q. (By Mr. Lister): You had been there for a long period of time before, hadn't you?

(Testimony of Oscar Herman Adams.)

A. That's right.

Q. You were there all the time the bridge was under repair, weren't you? A. I was.

Q. And you did try to keep in mind the traffic that went across during the repair as compared to that that had gone across before, didn't you?

A. I did, yes, sir.

Q. You say that this Leadbetter Company had trucks that moved back and forth?

A. Yes, sir. [38]

Q. And that prior to the accident you estimated they drove, no, how did you put that, as high as \$50.00, or what is your figure?

A. I would say as high as \$50.00.

Q. Can you give us what would be the average?

A. Well, there was days that they probably wouldn't go, wouldn't pay over \$30.00 in, I would say. I would say it would average \$40.00.

Q. All right. Now, during the time that this bridge was under repair did this Leadbetter equipment go back and forth at all?

A. No, not while it was being repaired.

Q. All right. Now what other equipment do you know about that went across regularly before the accident happened that didn't go back and forth during the time the bridge was under repair?

A. Well, these Mayflower Dairy trucks.

Q. How much, what would be the average?

A. Well, there was three trucks a day went over and back. That was \$1.00 a truck. That would be \$6.00 a day we lost there on the dairy trucks.

(Testimony of Oscar Herman Adams.)

Q. All right, what others do you know?

A. Well, there was the wood trucks, too. East-erly's wood trucks. He hauled four loads a day from over there.

Q. Would that be eight crossings or four crossings?

A. That would be eight crossings there. That would be \$8.00 on his wood trucks. [39]

Q. Can you mention any other specific equipment that habitually went across the bridge before and that didn't go across it during this time the bridge was under repair?

A. I can't think of any others, no, of our steady customers.

Q. You do remember making a memorandum, don't you, and submitting it to Mr. Chandler?

A. I did, sir. I might say, too, there was another outfit, the McGee Trucking Company, that hauled box shipments across to the Apple Growers Association in Hood River. There were large trucks, and we lost two trips of theirs over and back each day.

Q. Well, Mr. Adams, from your experience, at any time you were there and observing trucks going back and forth, what would be your best judgment as to the amount of loss of use which was sustained during the time this bridge was under repair?

Mr. Wood: I object to that. I think now he has stated all the facts he can remember. It is up to the Court.

The Court: I am going to let it in over the objection. Go ahead and testify.

(Testimony of Oscar Herman Adams.)

The Witness: You mean how much you think we actually lost?

Q. (By Mr. Lister): Yes, sir, how many—did you charge each truck that went across a dollar?

A. No, the large trucks, the larger trucks run as high as \$4.00.

Q. How many of those type of truck didn't cross during the time the bridge was under repair?

A. Well, there was some days there would be four or five trucks [40] crossing a day, and other days there wouldn't be any of those larger trucks.

Q. What would be the average?

Mr. Wood: Well, I object to that unless it shows some basis for making an average.

The Court: Mr. Lister, you had plenty of time before this trial to make a record of all of the truckers who passed before the collision who might pass after the collision, taking a comparable period for the prior years to find out.

Mr. Lister: If your Honor please, the reason it is not accountable, we will explain that a little later. The repairs on the road there between White Salmon—I mean the Columbia River Highway on the Oregon side, were such that it put an abnormal traffic across the bridge at this time, and it wasn't a fair comparison as to the average. That is the reason we cannot do it.

Mr. Wood: The way you have indicated.

The Court: Certainly, there ought to be some basis by knowing what was done before and after any comparable periods. You could have explained

(Testimony of Oscar Herman Adams.)

it, but I will let you ask the question to this witness.
Go ahead.

Mr. Lister: What was that last question, Mr. Reporter?

(Pending question read by the Reporter as follows: "Q. What would be the average?")

The Court: That they lost during the time the bridge was [41] down, how much a day?

The Witness: I would say from 80 to 100 dollars on trucks alone.

The Court: Are there any other questions?

Mr. Lister: You may examine.

The Court: We will take a five minute recess.

(Thereupon, at 11:30 a.m., a short recess was taken.)

The Court: Mr. Adams, will you resume the stand.

OSCAR HERMAN ADAMS

recalled, testified as follows:

Cross-Examination

By Mr. Wood:

Q. I will try to be rather brief, your Honor. Mr. Adams, you had been the bridge tender here for about three months before the accident had you not?

A. Manager, yes, sir.

Q. You had received word, you said, at least 12 hours in advance from Vancouver from the Russell

(Testimony of Oscar Herman Adams.)

Towboat Company that the tug and tow were coming up the river and with the boom?

A. I did.

Q. So that you knew you would have to lift the draw for that boom? A. I did.

Q. Now when the tug and tow got below the bridge, you saw them coming some two miles away, you said?

A. Yes, from a mile and a half to two miles, I should judge. [42]

Q. As they approached and got closer you lifted the drawspan—it isn't a drawspan; it's a liftspan, isn't it? A. Well, yes, it's a liftspan.

Q. How far away from the tug and tow were you when you started to lift the drawspan?

A. A quarter of a mile at least.

Q. Everything went right at first, didn't it?

A. Yes, sir.

Q. Then the bridge stuck due to the power failure after you had lifted it, you think, about 13 and a half feet? A. Yes, sir.

Q. May I ask how much you intended to lift it?

A. Thirty feet.

Q. Is that the limit of its lift?

A. No, it will go 80.

Q. Now when the thing stuck, how far do you estimate the tug and tow were below you then downstream?

A. Oh, I would say five or six hundred feet somewhere, four to six hundred.

Q. I don't know whether it makes a great deal

(Testimony of Oscar Herman Adams.)

of difference, but I have a statement here of yours that I will be glad to show you where you estimate the distance at that time to be about 300 yards below the bridge. Now you can say what you want. I am not trying to hold you or anything. I want the accurate fact.

A. Uh-huh; well, you know, it's pretty hard from up on the bridge [43] to estimate the feet, but it was around 600 feet, somewhere around there, when the bridge stuck.

Q. That's your best opinion?

A. That would be my best opinion, yes, sir.

Q. Now when that happened you were in the control at the time, weren't you? A. Yes, sir.

Q. And was Benson there with you?

A. Yes, sir.

Q. When you realized that it was stuck and the power had gone off you ran out of the control tower onto the platform, around it; is that right?

A. Yes, on the—yes, sir, on the east side.

Q. That is the up-river side?

A. Downstream, yes, and to the south the platform extends out, on the south side a few feet.

Q. You tried to, you waved your hat to the tug?

A. That's right.

Q. But there were girders and beams and so forth between you and the tug, weren't there?

A. Yes, sir.

Q. And the tug couldn't see you do that, could it?

A. Yes, he could have saw me if he had looked.

(Testimony of Oscar Herman Adams.)

Q. Well, now, I have got to refer to your written statement on that. I will ask the witness to look at this. [44]

(Respondent, Russell Towboat and Moorage Company's No. 1, statement, marked for identification.)

Q. (By Mr. Wood): Mr. Adams, will you look at the last page of those sheets and tell me if that is your signature where you signed it?

A. Yes, sir.

Q. You did sign it? A. Yes, sir.

Q. Now will you look at the—I think it's on the second page, the second page, second line from the top, I believe it is there—and I will ask you if the statement that you signed does not say this: "I immediately ran out of the control house and attempted to wave to the tug to stop and waved my hat, but because of the beams or braces of the bridge the pilot could not see me waving."

See if you don't say that there?

A. It says on the second page, you say?

Q. I think it is, yes.

The Court: Mr. Wood, will you go to the witness and point out to him?

Mr. Wood: Yes, your honor.

The Witness: I remember the very words I used, but I don't think they were put down there right. I said I doubted very much whether he saw me or not. That's the very words I used.

(Testimony of Oscar Herman Adams.)

Q. (By Mr. Wood): Have you read this, or couldn't you find it? [45] A. Yes, I read it.

Q. I will read it with you, or you can read it: "I immediately ran out of the control house and attempted to wave the tug to stop and waved my hat, but because of the beams or braces at the bridge the pilot could not see me waving." That's what it says, doesn't it?

A. Yes, and I probably overlooked it when I read it.

Q. You signed it?

A. I signed it, yes, sir. That wasn't the actual words I used.

The Court: Are you offering that, Mr. Wood?

Mr. Wood: Yes, your Honor, I am.

Q. (By Mr. Wood): Well, since your memory is so accurate, Mr. Adams, I will ask you this: How many beams and braces were there on the bridge between you where you stood on the upstream side of the bridge and the tug?

A. Well, there would be only one that would obstruct the view at all.

Q. Why do you use the words plural in your statement?

A. Well, I wouldn't know. That's all the beams there were there. That would be—just the one beam that come down from the top to obstruct my view.

Q. Now the tip of the boom had this big block on it that you have described? A. Yes, sir.

Q. That is a great, big, enormous pulley, [46] isn't it? A. Yes, it was.

(Testimony of Oscar Herman Adams.)

Q. That is what hit the bridging, didn't it?

A. No, the boom is what hit the bridge. The block, it seemed like when it hit up at the top it unhooked it.

Q. Didn't the block hit the railing of the bridge riding up?

A. When they come up the boom was high enough that this block went over the railing, but when it dropped off——

Q. That's what I say, it hit the railing, rode up over it, didn't it?

A. The boom did, yes; not the block.

Q. What kind of a day was this? What was the visibility like?

A. A clear day.

Q. A sunny day?

A. Yes, sir.

Q. Now you had no—well, you attempted to blow the whistle on the bridge, didn't you, the warning signal?

A. Yes, sir.

Q. Even though you knew it was dependent on power?

A. Well, I didn't—right at the moment I didn't know whether it was the power that was off or not. I knew that it was something that had stopped the bridge. I pressed the button to blow the whistle.

Q. And it didn't blow?

A. It didn't blow, no, sir.

Q. Was it after that then you ran out then, and tried to wave [47] your hat?

A. That's right.

Q. Did you have any other means of emergency signal there in case of power failure like this?

A. No, sir.

(Testimony of Oscar Herman Adams.)

Q. You had no horn?

A. No, nothing, only this whistle we have on the bridge.

Q. You had no red flag?

A. Red flag, no, sir.

Q. It is a fact, is it not, that after this accident the engineers have put in a regulation requiring you to have on hand some such emergency signals?

A. Since then?

Q. Yes, isn't that right?

A. Yes, I think the new regulations is now that we have to have a flag.

Q. A red flag? A. Yes, sir.

Q. In case you cannot open the draw proper?

A. That's right.

Q. In fact, its a red flag by day and a red light by night, is it, under the new regulations?

A. Well, yes.

Q. What?

A. We have red and green both there. If anything happens we [48] wave the red one, and when they are ready to proceed, why, we wave the green one.

Q. That is by day?

A. By day, and we have lanterns by night.

The Court: Is that material?

Mr. Wood: I say, those are subsequent regulations that have been put in effect since this accident.

Mr. Lister: Well, if your Honor please, I don't want to lead him in any way, but I cannot see how it has anything to do with the issues here.

(Testimony of Oscar Herman Adams.)

The Court: I think there is grave enough condition, Mr. Wood, that subsequent regulations would be sufficient to charge this man, the Bridge Company, with negligence for failure to have a lantern.

Mr. Lister: I move that all that testimony be stricken.

Mr. Wood: I have no more about that. I could refer to it in the argument.

The Court: All right.

Q. (By Mr. Wood): Were you present when this photograph was taken? A. Yes, sir.

The Court: That is Exhibit 1.

Mr. Wood: How long was that taken after the accident?

A. Just immediately, oh, in a few minutes.

Q. A few minutes? [49]

A. A few minutes. I wouldn't know just exactly, but the photographer came over from town and took the picture.

Q. Did you send for him? A. No, sir.

Q. Where did he come from, Hood River?

A. Hood River.

Q. It, apparently, was a bright, sunny day, from the looks of the picture?

A. It was a very bright day.

Q. You spoke of some lights that were on the bridge that were also dependent on the power?

A. Yes, sir.

Q. Do you keep them burning during the daytime?

A. No, only when we are raising the bridge.

(Testimony of Oscar Herman Adams.)

Q. Why do you do it then?

A. Why, we have to turn the power on at the toll house. When you turn the power on, that lights your lights underneath the bridge.

Q. Well, when you turn the power on to raise the lift the lights go on? A. That's right.

Q. Well then, when you—when the thing comes to a stop you turn the power off, don't you?

A. No, the power is still on yet.

Q. After the bridge is lifted? [50]

A. Yes, sir, without something happens like a fuse burns out like it did at this time, why then, the lights go out.

Q. I see, and what light was it then?

A. It was a light on each pier, at each end of the span down about, oh, I should judge 20 feet below the bridge, and also one in the center of the span, red lights.

Q. That was on the span itself?

A. Yes, sir.

Q. They are for use at night, aren't they?

A. Yes, we keep them on at night always.

Q. Well, isn't that their only purpose, to be used at night?

A. Well, not necessarily. I expect it is for day-time, too, in case boats go through when you turn the power on where you have to raise the bridge for the boat, why, the lights automatically come on.

Q. What are the size of these lights, Mr. Adams?

A. What size are they?

Q. Yes.

(Testimony of Oscar Herman Adams.)

A. 75 watt in the two, well, I think they are all 75, all three of them are 75.

Q. 75 watt? A. Yes, sir.

Q. In what kind of glass or bulbs?

A. Well, they are in, oh, forget now, these frosted bulbs.

Q. Ordinary bulbs? [51]

A. Well, they are supposed to be those kind that don't burn out.

Q. Frosted, did you say?

A. Yes, kind of a frosted bulb.

Q. Are they about the size of the ordinary 75-watt light you see in the house? A. Yes, sir.

Q. They are quite small, then?

A. Yes, sir.

Q. When you were hired there did you receive any instructions from the management about warning signals or anything to do in case of a power failure or any emergency? A. Yes, sir.

Q. What were they?

A. Well, give me—the instructions I had were to turn on the lights and——

Q. I am talking about in case of an emergency.

A. No, I don't think I had any instructions as to an emergency, no. Just the regular operation of the bridge.

Q. That's all.

The Court: Mr. White?

Mr. White: No questions.

The Court: Any redirect?

(Testimony of Oscar Herman Adams.)

Redirect Examination

By Mr. Lister: [52]

Q. Could you give the Court any definite information as to how vividly you could see the operator of the tug or how visible you were to him in answer to this question of whether or not——

A. Yes, I could see him when I first tried waving my hat.

Q. Well——

A. And I could even see his eyes looking up at the top of the boom. He was watching the boom all the time.

Q. You could at that time see his eyes; is that right? A. I could, yes, sir:

Q. That's all.

Q. (By Mr. Wood): Is it 600 feet away?

A. Yes, sir.

Mr. Wood: That's all.

Recross-Examination

By Mr. White:

Q. One more question. Whose eyes were you seeing on the tug?

A. The fellow that was operating the boat.

Q. Where was he standing on the boat?

A. In the top up there with the steering wheel. He was standing there.

Q. In the pilot house?

A. In the pilot house.

Q. Did you see anybody else standing near the pilot house or on the deck below?

(Testimony of Oscar Herman Adams.)

A. I think I did. I think there was a fellow standing down there. [53]

Q. He was looking up in your direction, too, was he, or did you notice?

A. No, I didn't. I was watching the man, the fellow that was controlling the boat.

Q. Where was this other man that was standing?

A. Oh, I don't recall. I know there was another man there somewhere.

Q. Was he standing on the port side or the——

A. Well, he was standing by, I should judge I could see him, I know, just glancing. I know there was another man there, but just where he was standing I couldn't——

Q. Was it on the same side, was it the side of the tug closest to the pilot house just below the pilot house?

A. He could have possibly been standing there, yes. I couldn't tell you exactly.

Q. After the collision you went out on the span, didn't you? A. Yes, sir.

Q. How long did it take you to get out there?

A. Oh, I would say a minute, minute and a half.

Q. And you left the control tower. How did you get out on the span?

A. I crawled out one of those steel girders on top there.

Q. That span where it stopped was just about in a position where you could leave the control

(Testimony of Oscar Herman Adams.)

tower and get out on the span; is that right? I mean, it stopped at about 13 and a half feet [54] high?

A. Yes, I should judge so. Well, it seemed like—I tell you, there was some braces went through there. I crawled out on one of those braces. Now just where that was on the span I couldn't tell you.

Q. But you had no difficulty getting out there?

A. I had quite a difficulty getting back. I wondered how in the world I ever made it out there, anyone as heavy as I was crawling out there on a narrow piece there about six inches wide.

Q. Did the thought ever enter your mind to go out there on the span before the collision?

A. I couldn't have gotten out there very easy before the collision, no.

Q. That's all.

Mr. Lister: That's all.

(Witness excused.)

Mr. Lister: Call Mr. Benson.

The Court: We will resume at two o'clock. We will now recess until two.

(Thereupon at 12:00 o'clock noon, the trial was recessed until 2:00 o'clock p.m., the same day.) [55]

Afternoon Session

(2:00 o'Clock P.M.—Trial Resumed)

(Argument off the record.)

The Court: You may call your next witness. I don't want any more argument at this time.

Mr. Lister: I will call Mr. Otto Hermann.

OTTO HERMANN

a witness called by the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Lister:

Q. Will you state your name?

A. Otto Hermann.

Q. Otto Hermann? A. That's right.

Q. What is your business, Mr. Hermann?

A. Contracting.

Q. What type of contracting?

A. Oh, bridges, dams, docks and so forth, heavy construction.

Q. How long have you been in that business?

A. 27 years.

The Court: Just one second. Is there any dispute about the fact that the bridge ought to be repaired and the cost of the bridge, to repair it?

Mr. Wood: Yes, there is a dispute about the cost. We have [56] put them on their proof as to the cost.

The Court: Go ahead.

(Testimony of Otto Hermann.)

Q. (By Mr. Lister): What is your connection with the General Construction Company?

A. Vice-president.

Q. How long have you been associated with the General Construction Company?

A. Entirely 27 years.

Q. How long have you been vice-president?

A. Oh, about the last 12 years.

Q. Will you tell us generally what you have done in that capacity, Mr. Hermann, in regard to——

Mr. Wood: We will admit his qualifications.

Q. (By Mr. Lister): Did you have occasion to examine the Hood River-White Salmon Bridge on or about June 13, of last year?

A. Well, just what do you mean by that?

Q. Did you make some repairs to the Hood River-White Salmon Bridge during 1950?

A. Yes.

Q. Do you remember when you first saw the bridge in connection with the repair work?

A. I don't remember the date. I know I was up there to look it over and arrange for putting in the steel, but I don't remember the exact date.

Q. Will you tell us just generally what you saw when you arrived [57] there?

A. I saw, looked it over, and saw that the cord was bent, the lower cord, one of the posts was knocked out, and that's what we had to replace.

Q. Did you supervise, or was the work done

(Testimony of Otto Hermann.)

under your direction and supervision that was done up there?

A. It was, by our men, but under the direction of the engineering.

Mr. Lister: Mr. Wood, are you questioning the repairs that have already been done as distinguished from those that are still to be done?

Mr. Wood: No, I don't think so. I might want to have proof on it, the necessity of those that still are to be done.

Q. (By Mr. Lister): Will you tell the Court, Mr. Hermann, what you saw and what you—what was the, what were the repairs needed to be made there, and what did you do?

A. We came up—I don't recall the man's name, the engineer Mr. Chandler had hired, and we came up under his direction.

Q. Was it Mr. Dorner?

A. Mr. Dorner is right. We put in the lower cords, or strengthened it, put in a new post, and just general work to get it repaired for usage.

Q. Do you remember what your charge was for the work you did in that connection?

A. No, I do not.

Q. Were you paid for that work? [58]

A. Yes, we were.

Q. Was the charge you made a fair and reasonable charge for the work; do you know?

A. I would say it is.

Q. Was that work made necessary because of some recent damage to the bridge?

(Testimony of Otto Hermann.)

A. That is right.

Q. Now you have also, haven't you, made a bid on some work that you contemplate doing in connection with additional repairs up there?

A. That's right.

Q. Will you mark this, Mr. Clerk?

(Document, letter, marked Libelant's No. 12 for identification.)

Q. (By Mr. Lister): Will you examine that paper marked Libelant's Exhibit 12?

Mr. White: Is that the same letter you gave us in our conference, Mr. Lister?

Q. (By Mr. Lister): Is that your letter, Mr. Hermann? A. Yes, this is my letter.

Q. What does that represent?

A. It represents putting the false work under the left span.

Q. What do you mean by that? Why do you put false work under there?

A. We had a letter from Mr. Chandler requesting us to give him [59] a price on placing false work under the span in places he wishes to repair it, repair the lower cord.

Q. Would you tell us and the Court whether or not that bid for that work is a fair and reasonable charge for that service?

A. I would say it was fair at that time. I would say at this time it is not high enough.

Q. What is a fair and reasonable charge for that work?

(Testimony of Otto Hermann.)

A. Meaning right now, that labor——

Mr. Wood: Well, I object to that as immaterial, your Honor. If the bid was fair and reasonable at that time he has got to minimize his damages and go ahead and do it. He cannot wait for the outcome of this lawsuit and then take out for a possibly higher bid.

Mr. Lister: I think we will be able to show it couldn't have been done yet, if your Honor please.

The Court: The objection is overruled. I am going to let the witness testify.

The Witness: The reason I say that is the fact that labor, piling and lumber have all gone up, as you people know, since the war.

Mr. Lister: Would you gentlemen take a look at this?

Mr. White: Is this dated January 2nd, 1951?

Mr. Lister: No, this is August, 1950.

(Document, breakdown of prices, marked Libelant's 13 for identification.) [60]

Mr. Lister: If your Honor please, we offer this in evidence.

Mr. Wood: No objection.

The Court: It may be admitted.

(Letter formerly marked Libelant's No. 12 for identification received in evidence.)

Q. (By Mr. Lister): Do you have the paper, Mr. Hermann, marked Libelant's Exhibit 13?

A. Yes.

(Testimony of Otto Hermann.)

Q. What is Libelant's exhibit, what does that represent?

A. That is the breakdown of price that I gave you broken down into how many piles, cost of the piling, cost of the lumber.

Q. Did you give that breakdown at my request?

A. Yes.

Q. That adds up, does it, to the figures on Exhibit 12? A. That's right.

Q. Now are you prepared, Mr. Hermann, to say whether or not all that construction is necessary to permit that bridge to be put back in the condition it was prior to this accident?

A. Well, if you are asking my opinion on, you have to, to fix that or hold that truss, if you have to do any repairs to it, you have to have false work under it to take care of the load.

Q. Is there any other way that that could be done at a less cost, as far as you know?

A. That I have not gone into, and I couldn't say. [61]

Q. You have seen the bridge, have you not, in its present condition? A. Yes.

Q. And that is after the, what you call the temporary repairs were completed? A. Yes.

Q. What is your testimony as to the condition of the bridge in its present condition as compared to what it was before this accident?

Mr. Wood: If he saw it before. Has he seen it before? I don't think he has testified to that.

(Testimony of Otto Hermann.)

The Witness: Did I see that bridge before the accident?

Q. (By Mr. Lister): Had you seen it before that?

A. Oh, yes, we built the bridge. I have seen that.

Q. All right now, in order—what is the condition of the bridge now after those so-called temporary repairs have been completed as compared to what it was before it had this condition?

A. Well, in my personal opinion, it's just not as good.

Q. And is that based on your experience?

A. That's all it is, just to experience. I haven't gone into, done anything, anything like that.

Mr. Lister: I would like to offer that particular Exhibit 13 in evidence.

Mr. Wood: No objection.

The Court: It will be admitted. [62]

(Document, breakdown of prices, formerly marked Libelant's No. 13, was received in evidence as Libelant's Exhibit 13.)

Mr. White: Is that dated January 2nd? We want to be sure we are talking about the same thing. Yes.

Cross-Examination

By Mr. Wood:

Q. Just a question or two. The total damages claimed in this case, including the loss of use of the bridge and everything, is about \$31,000, and your item here for false work alone is \$16,400?

(Testimony of Otto Hermann.)

A. That's right.

Q. So, naturally, it leads to inquiry on our part whether such a large item as that, half of the total sum merely for false work which is going to be removed, whether that is really necessary to make these repairs?

A. Well, I don't know any other way that you—whenever you build—when the bridge was built in the first place he put false work under it. That's the way that you build a bridge. You put false work on it. Then you lay all your steel out on it, shove it up. After you have it all connected, then you swing your false work out, take it out.

Q. I don't think the Court or ourselves understand all the details. I just want your final conclusion. Is it your statement that this false work, as large an item as that, is necessary to [63] repair that bridge? A. Yes, sir.

Q. And it could not be done in some other way cheaper?

A. I have not gone into that, but right offhand I wouldn't know what way it would be.

Mr. Wood: I think that's all.

Redirect Examination

By Mr. Lister:

Q. Mr. Wood said the item was 16 thousand. As a matter of fact, it's about 19 some odd thousand, isn't it, putting it in and taking it out?

A. Well, you add your two sums.

Q. That's all.

The Court: Is there any reason why Mr. Hermann may not be excused?

Mr. Wood: No.

(Witness excused.) [64]

HAROLD BENSON

called as a witness in behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Lister:

Q. You state your name to be Harold Benson?

A. That's right.

Q. Will you keep your voice up, Mr. Benson, so all of us can hear? Where do you live, please?

A. Hood River, Oregon.

Q. How long have you lived there?

A. I was born there, and I lived there probably 35 years, all my life.

Q. Now what is your occupation?

A. At the present time I am running a motor repair shop and doing electrical service work.

Q. What, if any, work have you done for the Oregon-Washington Bridge Company?

A. I have done their service work and stand by while they were operating the bridge.

Q. How long a period have you been doing that type of work? A. On the bridge?

Q. When did you first commence working for the Oregon-Washington Bridge Company on the bridge? A. Oh, about 1938. [65]

(Testimony of Harold Benson.)

Q. Have you worked for them off and on since that time? A. Yes, I have.

Q. Did you say 1938 or 1949?

A. I meant to say 1948.

Q. Now, will you tell us, were you present on June 13, 1950, when this accident happened?

A. I was.

Q. What was your first—what was the first thing you did? When did you get there?

A. I got there shortly after Mr. Adams called me.

Q. Did you see this equipment in the river when you—— A. Yes.

Q. Where did you come from?

A. I came from my home in Hood River.

Q. Did you drive across the bridge?

A. Yes.

Q. Did you go clear across the bridge?

A. Went across the bridge, turned around and parked on the Washington side just off the lift-span.

Q. Would you be on the right-hand side or the down-side of the bridge when you parked?

A. Right-hand side, yes.

Q. That would be the downstream side, would it?

A. Yes.

Q. When did you first see the equipment that ran into the bridge? [66]

A. As soon as I come onto the bridge, on the way over.

Q. From that time until the accident occurred

(Testimony of Harold Benson.)

were you conscious of any equipment, seeing this equipment at all times? A. I was.

Q. Where was it when you first saw it?

A. Well, I would say it was a mile or so down the river.

Q. From that time on did you notice any change in its forward progress? A. No, I did not.

Q. Now what did you do, if anything, toward lifting the liftspan of this bridge?

A. I shook one rope loose that holds the flexible cables feeding the bridge on the road level, and two up above just alongside of the control tower.

Q. As I understand it, at the time of the accident there were two structures on the bridge, one what they call the toll house and the other one is the control tower; am I correct in that?

A. That's right.

Q. The toll house was in the middle of the liftspan; is that right? A. Yes.

Q. And where was the control house?

A. The control tower was on the Washington end or north end just off the liftspan, located about 20, 25 feet above the road level.

Q. In going up and down that tower, how did you—was there a [67] ladder or steps or what?

A. A stairway.

Q. Did you go up there when Mr. Adams went up there, or when did you go up there?

A. I went up there just a little bit ahead of Mr. Adams.

(Testimony of Harold Benson.)

Q. Now as this bridge was being lifted did you watch the instruments there and see what he did and how he did it?

Mr. White: I can't help but feel, your Honor, that Mr. Lister is leading this witness.

The Court: I don't care if he is leading him. I am just wondering what is the use of all this testimony. There is no dispute about it, Mr. Lister. We have gone over that once. Let's get down and find out how the accident happened, where the boat was when he first saw it. That is the important thing and why we are here.

Q. (By Mr. Lister): Let me ask you this general question: Was there anything on any of the equipment there on the bridge that failed to function during the time this liftspan was being raised or prior to this accident?

A. No, there was nothing unusual about the operation of the bridge. Everything was operating normal.

Q. Didn't you tell me that there was something, if any, gauge or indicator was there there to show whether or not an overloading had been put on the electrical equipment?

A. Well, there is a motor there that shows the amount of current [68] the bridge is drawing under the lifting operation, and that was normal.

Q. What is the significance of that?

A. It shows what your load is at all times.

Q. Well, from your experience, from your ob-

(Testimony of Harold Benson.)

servation, was there any unusual load on this bridge at the time? A. No, there wasn't.

Q. Now what happened to the liftspan?

A. Well, nothing happened to the liftspan except power failure. It stopped, which it is supposed to do.

Q. Do you know what caused the power failure? Do you know where the power failure was?

A. According to the telephone conversation the PUD man said a fuse had blown over there in the substation.

Q. Well, are you in a position to say whether or not there was any failure of anything on the bridge itself? A. Yes, I believe I am.

Q. Well, was there? A. No.

Q. Now, as I understand it, the bridge, the liftspan was raised to a certain height and stopped. Can you tell us about how high it was?

A. Thirteen and a half feet, according to the indicator.

Q. Where is your indicator?

A. On the control panel in front of the [69] operator.

Q. Is that where you could see it?

A. I could see it from where I was.

Q. When the span stopped in that position where was this tug and its tow?

A. Oh, two or three hundred yards below the bridge.

Q. What is that, please?

(Testimony of Harold Benson.)

A. I would say two or three hundred yards below the bridge.

Q. Had it altered its course in any way as it came up toward the bridge?

A. Not that I could notice.

Q. Had it altered its speed in any way?

A. Not that I could notice.

Q. Well then, what happened from that point on? Just tell us what happened, Mr. Benson.

A. Well, as soon as the bridge stopped I immediately tried to determine why it stopped, so I checked the voltmeter there that shows the load of voltage, and it showed no voltage. It was during that time Mr. Adams went out trying to give some sort of a signal to the boat.

Q. Well, could you tell, were you in a position where you could see the boat and Mr. Adams both?

A. Yes.

Q. Did the boat slow its speed in any way before it hit the bridge? A. I couldn't notice it. [70]

Q. Well, what part of the tow came into contact with the bridge?

A. The boom hit the bridge.

Q. Well, tell us what it looked like and how it contacted the bridge?

A. Well, I would say a few feet down from the end of the boom it struck the railing on the bridge, crashed the railing, and then crashed this steel member, what I would say would be the main stringer on the bridge steel. The beam went on through until it stuck out on the other side of the

(Testimony of Harold Benson.)

bridge and knocked at least one member loose on the other side.

Q. With regard to the toll house, where did the boom come into the bridge?

A. It just barely missed the toll house. In fact, it bruised the toll house a little bit.

Q. On which side of the toll house, the Washington side or the Oregon side?

A. The Washington side or north side.

Q. What is the condition of the bridge there as to having lights on it or otherwise?

A. Well, they have—you mean what condition the lights are?

Q. Well, tell us where the lights are, what kind they are, and whether or not they were lighted at the time this impact occurred?

A. Well, there is four navigation lights down on the piers which are more or less just marking the piers between the liftspan. Then there is one on the upstream, and one on the downstream [71] side on the liftspan.

Q. What do those lights look like? Tell us something about their dimension or something like that.

A. Well, they are red lights. That is, they are an enclosed light with red covering around them so they show red.

Q. Well, are they circular?

A. No, they are half-round.

Q. What would be the diameter of them?

A. Ten inches.

Q. When you say they are half-round, how is

(Testimony of Harold Benson.)

the light fixed into the bridge? Does the arc go up over the cord, or how is it? What does it look like?

A. Well, a little, well, there is a piece of pipe extends out of the concrete. This light is mounted on that, and it is glass all the way around the face. In the back side is an opening to get at the light to relamp it.

Q. I get the impression from what you said a while ago that one coming from downstream looking towards this bridge would see what seemed to be a half circle, a red light through half a circle; am I correct in that? A. Yes.

Q. Did you say that the diameter would be about how much, please?

A. About eight or ten inches.

Q. Now do you know whether that light was shining the day of this collision? [72]

A. No, I don't know whether it was or not.

Q. What caused that to light up; do you know that?

The Court: I don't know what the purpose of this is, this interrogation. What do you intend to prove about the light?

Mr. Lister: Well, it is our understanding, if your Honor please, that until this power went off there were red lights there, and this craft was coming in up against red lights up until the power went off. That's the way I understood from his testimony. That's why I was asking this gentleman.

The Court: Do you think that on a bright, sunny

(Testimony of Harold Benson.)

day that a ship could see a red light, 75-watt lamp, 600 feet or 1,000 feet away?

Mr. Lister: I don't know, but surely it would see it someplace. That was my understanding of the situation.

The Court: What other kind of lights did it have, green lights on the piers?

The Witness: No, red lights.

Mr. Lister: Then do you know, Mr. Benson, you say you don't know whether this light was burning. Do you know what, if any—where was the source of power of those lights? Where did they get their electric power?

A. Well, the power all comes on the same line.

Q. Do you know whether those lights can be turned on and off independently of the other equipment on the bridge?

A. The lights are controlled by a switch in the control house, [73] navigation lights as they are called.

Q. What is that, please?

A. They are called navigation lights.

Q. They have a separate switch in the—where, please?

A. In the control—or in the toll house.

Q. Now what about the whistle? There is a whistle on the bridge, isn't there? A. Yes.

Q. How does it operate?

A. From the same source of power.

Q. Do you know whether the whistle, anyone tried to blow the whistle?

(Testimony of Harold Benson.)

A. Well, I couldn't say for sure about that. I don't know.

Q. What is the fact as to whether or not the whistle could be blown under the conditions you found there when the span, the liftspan stopped?

A. I didn't understand the question.

Q. Could you have blown that whistle after the span had stopped moving upward on the day of this accident?

A. No.

Q. Why not?

A. The power was off.

Q. Now, I understand that there is some electrical equipment there that was damaged in this accident. Do you know anything about that, Mr. Benson? [74]

A. Well, as far as I know, what was damaged was some conduit going alongside of the bridge into the control—or into the toll house. Some conduit there was pretty badly damaged.

Q. Was that at the point of impact?

A. Yes.

Q. When were you on the bridge last prior to this accident happening on June 13th?

A. We made a test lift the Sunday before the accident happened.

Q. Was everything in operating order at that time?

A. Everything worked okeh.

Q. Were you there when the equipment was pulled loose from the bridge after the accident?

A. Yes.

Q. What was the condition of the bridge then? Did you have any trouble lowering it down?

(Testimony of Harold Benson.)

A. No.

Q. Well, could you do it immediately?

A. We couldn't do anything until power was restored, which was about an hour and a half later. They called from PUD and asked if we had power, and I said, "Wait a minute, we will check." So I went over to the voltage meter, and it showed voltage on all three phases, so I said, "It's okeh. We have power now," and then we could lower the bridge.

Q. Where, at that time, was this equipment that had run into the bridge? [75]

A. Well, it had gotten clear of the bridge and pulled over to the shore there and tied up.

Q. Were you there when this equipment finally went through the bridge?

A. Yes, I went home. After we had lowered the bridge to let traffic through I went on home, and 15 or 20 minutes later Mr. Adams called again and said that they were ready to come through and wanted me to come back over again.

Q. Did you go back?

A. I went back, and we raised the bridge at that time to 30 feet and let him through.

Q. Did you have any trouble raising the bridge then? A. No.

Q. Mr. Benson, I am not sure I understood fully the relationship between these so-called navigation lights and the other electrical equipment on there. Are they separate and distinct so that they have to be a separate operation to turn those lights

(Testimony of Harold Benson.)

on, or will they automatically come on when you start to lift the bridge?

A. You are speaking of the navigation lights?

Q. Yes, sir.

A. Well, the navigation lights are controlled from a switch in the toll house, and as far as I know there is no connection between that operation and lifting the span.

Q. Now you have said, distinguished between navigation lights. [76] Maybe we are not speaking about the same thing. What do you mean by navigation lights?

A. Well, I mean the four lights, one on the up and downstream side of the pier, on both sides of the lift span.

Q. I thought you said there was one light in the middle?

A. There is two lights in the middle, one upstream and one downstream.

Q. What was the condition of those two lights?

A. They worked okeh, if that's what you mean.

Q. But how do they operate? Do they operate from a separate switch, or how?

A. They operate from a switch in the toll house, not from the control tower.

Q. Mr. Benson, you didn't know whether or not that particular bridge motor turned on before you could start to lift the lift span?

A. As far as I know, it has no connection between the operation of the navigation lights and lifting the span.

(Testimony of Harold Benson.)

Q. It would be your understanding that if the operator saw fit to do so, he could lift the span and not turn on those so-called navigation lights at all?

A. It would be possible, yes.

Q. You don't remember whether they were turned on this day or not? A. No. [77]

Mr. Wood: What was that last question?

Mr. Lister: I understood him to say on this day of the accident he didn't know whether that was turned on or not; is that correct?

A. Well, I don't know whether they were on or not, I didn't notice. Of course, in the daytime it wouldn't be noticeable unless you took particular pains to see whether they were on or not, and I didn't do that.

Mr. Lister: I think that's all.

Cross-Examination

By Mr. Wood:

Q. Just a moment, we want to ask a question or two.

You said several times that you didn't notice the oncoming tug until it stopped its forward progress. Do you remember saying that? A. Yes.

Q. But you had no particular reason for noticing that particularly, did you?

A. Well, yes, I did. I was interested in getting that bridge up before he got through there.

Q. I know, but now the first time I think you were asked that question was when you were driv-

(Testimony of Harold Benson.)

ing across the bridge with your car. You were asked whether you noticed the tug until it slowed or stopped its progress. You said you didn't notice it. You had no reason for looking at it with that purpose in mind then, [78] did you?

A. Well, he was quite a ways away then, and I was driving a car across the bridge.

Q. Well, what reason had you for paying any particular attention as to the progress of the tug and whether it stopped or not?

A. Well, no particular reason, only that I was, I was interested to be sure that we got the bridge up or tried to before he got there.

Q. Yes, well, you had plenty of time to do that, didn't you? A. Yes.

Q. In fact, when you had the bridge up the tug and tow were about a quarter of a mile downstream from you, weren't they? After you had the bridge up? A. No, he wasn't that far down.

Q. Well, I have a statement of yours here which I will be glad to show you in which you say: "When it,——" that means the tug—"was approximately one-quarter"—

The Court: Mr. Wood, I think if you are going to impeach him he ought to see the statement.

Mr. Wood: Yes, your Honor, may I approach him?

The Court: Oh, yes.

Q. (By Mr. Wood): A man named Duncan came up and interviewed you, didn't he, and took your statement? His name was Duncan?

(Testimony of Harold Benson.)

A. I don't know his name.

Q. Anyway, a man came up and wrote this statement out as you [79] gave it to him, didn't he?

A. I remember somebody coming here, and he was writing all the time.

Q. Did he write it in your presence?

A. I was there, yes, sir.

Q. Did you read it over?

A. Yes, I think so.

Q. Well, was it correct?

A. It was fairly correct.

Mr. Lister: I can hardly hear either Mr. Wood or the witness, if your Honor please.

Mr. Wood: Well, he said he read it over and it was fairly correct.

The Witness: There could easily be differences there of a few yards or like that.

Q. Yes, I think so, yes, but I called your attention to this part of your statement: "When it was approximately one-quarter of a mile from the bridge, the bridge was put up." A. Uh-huh.

Q. Now, is that right or not? I don't care what you say. I just want to get the truth.

A. Yes, well, I would say that's approximately when we started the operation, all of the preliminaries of going ahead and raising the bridge, but that don't mean that it was a quarter of a mile down when the bridge got up and stopped. [80]

Q. How far down was it when the bridge got up and stopped, in your opinion?

(Testimony of Harold Benson.)

A. I would say two or three hundred yards, but time elapsed between the time we started the lift operation, including the preliminaries.

Q. Well then, it is true that two or three hundred yards would be six to nine hundred feet, wouldn't it? A. Approximately.

Q. Now, Mr. Benson, you do not work for the bridge regularly, do you, but, as I understand it, you are called out there when they expect to lift this span? A. That's right.

Q. You are called out there so that you will be on hand in cases of any electrical difficulty; isn't that right? A. Yes.

Q. Do they always call you out when they get notice they are going to lift this span?

A. Yes, I couldn't say that they always have, but in the last year I would say that they have called me just about every time. There was a time or two that I was not available—that I wasn't there.

Q. Well, do you know whether they had experienced any power failures before this?

A. Not during lift operation. There have been other power failures. [81]

Q. That affected the bridge?

A. Not during the operation of the bridge.

Q. Well, what were those other power failures? What did they affect, the lights, or what?

A. Power and lights both.

Q. Well, they have had other instances than when the bridge was without any power; is that correct? A. That's right.

(Testimony of Harold Benson.)

Q. How many of those do you know of?

A. Two times that I can remember.

Q. How many?

A. Two times that I can remember.

Q. Over what period of time?

A. Well, as soon as it was noticed by the bridge tender, he called me, and I went up.

Q. Excuse me, I didn't mean that. I meant was it over a period of six months or a year or what?

A. Oh, a year, I would say a year and a half.

Q. Now, I would like to get a little clearer the picture in my mind about Mr. Adams waving his hat to the tug. You were both in the control tower when the bridge stuck; weren't you?

A. When the bridge stopped, yes.

Q. And the control tower is on the, it's not on the lift span, but it's on the tower right beside it, isn't it?

A. Yes. [82]

Q. So as the bridge lifted up the span lifted up?

A. Uh-huh.

Q. I suppose the level, the deck of the span came up abreast with the control tower, did it, or did it go above it?

A. Well, it must have been below it.

Q. Below it? A. Yes.

Q. How far below—there is a platform around the control tower out onto which Mr. Adams stepped, isn't there? A. Yes.

Q. Well, how far was the deck of the span below that when it came to a stop?

A. Well, maybe eight or ten feet.

(Testimony of Harold Benson.)

Q. Were there steps leading down so that Mr. Adams might have walked down onto the span?

A. No, there were no provisions made for walking from there to the lift span.

Q. Was there any way that he could even get from the platform to the lift span?

A. Not without walking on steel beams and taking his own chances. There isn't a stairway, runway of any sort.

Q. Does the platform around the control tower extend downstream from it as well as upstream?

A. It extends along the east side out past the control tower three or four feet, clear around the control tower, and on the [83] west side about the same——

Q. Well then, Mr. Adams apparently could have walked on the downstream side and waved to the tug, could he not?

A. No, he could not because on the west side or downstream side there is transformers supplying the juice to the bridge, and there is a sign there says, "Danger, keep away." That is all high voltage.

Q. How big is that transformer?

A. There is three or four transformers out there.

Q. How big are they?

A. Well, they are about so high (indicating), so wide. (Indicating.)

Q. They also then would tend to obstruct the

(Testimony of Harold Benson.)

view from the men on the tug to Adams; would they not?

A. No, because they were below the windows.

Q. Below the windows? A. Yes.

Q. I know, but Adams was not in the windows; he was outside, wasn't he?

A. Yes, but the transformers are on the west side of the building.

Q. Oh, I see. Well then, if they are on the west side of the building and not to the south of the building at all, Adams, it seems to me, could have gone on the downstream side of the bridge. I don't understand that. [84]

A. No, he couldn't get there without getting into this high voltage.

Q. Well, all right.

A. Because the platform—there is no platform on the north side of the control tower.

Q. No?

A. It's just on the east side and the north side and west side.

Q. Isn't it on the south side? A. No.

Q. How long a time did you say it was elapsed between the time the bridge came to a stop and the collision happened?

A. Oh, anywhere from two to five minutes.

Q. What?

A. About three to five minutes, approximately.

Q. I have to show you your statement again, unless you want to take my word for it. Didn't you

(Testimony of Harold Benson.)

say in your statement five to ten minutes after the bridge was raised?

A. Maybe I did. Yes, I remember at the time when he wrote it down I corrected him on that. I says, "I don't believe, come to think about it, it was that long because we didn't have that much time."

Mr. Wood: I am going to offer that statement in evidence.

The Court: Well, the witness admits that he made the statement, made the remarks that was included in the statement.

Mr. Wood: Very well. I guess there is no use offering it. [85] I agree with your Honor.

Q. (By Mr. White): Do you deny that you made that statement?

A. No, I didn't deny it. I merely stated that at the time he wrote it down I corrected him on it and said that, on second thought, I didn't believe it that long, but he left it go that way. However, I didn't sign the statement.

Q. (By Mr. Wood): Now, Mr. Benson, you don't know whether the whistle was affected by the power failure or not, do you? A. Yes, it was.

Q. Was there any other emergency signal on the bridge like a horn or a flag or a battery operated, noise-sounding device or anything that would be an alternate signal if the power failed?

A. No, not that I know of.

Q. Is there any log kept about the operation of that bridge? A. I wouldn't know.

(Testimony of Harold Benson.)

Q. Do you know whether these previous power failures were entered into any record?

A. Not that I know of.

Q. Did you ever receive any instructions from the bridge owners about what to do in the event of power failure?

A. No.

Q. But they called you out there almost every time in case there should be some electrical difficulty, you said?

A. Yes.

Q. Well, besides these power failures were there other electrical [86] difficulties that you know of that happened before this?

A. Well, there has been things to repair on the bridge.

Q. That isn't what I meant. I mean, regardless of power failure, have there ever been times when they would try to open the draw that they had any difficulty due to electrical failures?

A. No.

Q. Not that you know of. All right, that's all, thank you.

Cross-Examination

By Mr. White:

Q. The bridge knew of these several previous power failures of which you spoke; the bridge knew about their existence, didn't they, the bridge tender; isn't that right?

A. I imagine they did.

Q. Were there any—there were no rules and regulations or any statements to you by any official of the bridge company as to what to do in the event of a power failure? Was there?

A. No.

(Testimony of Harold Benson.)

Q. You spoke of this catwalk around the three sides of the control tower mentioning the east side. There was a catwalk on the north side and the west or the downriver side; is that right? A. Yes.

Q. How wide were these catwalks?

A. About two feet wide.

Q. How much?

A. About two feet wide. [87]

Q. How wide were these transformers? Did they occupy the whole catwalk on the down-river side?

A. No, there would be room to squeeze through there, but there is a sign up there, "Keep out, high voltage." A person really would not have any business in there.

Q. Was that sign strung on a little chain, or was that just a sign near there?

The Court: Well, you wouldn't want a man to go past and by a high voltage transformer where he had to squeeze through, Mr. White.

Mr. White: Pardon me, your Honor.

Q. (By Mr. White): Would a man have to squeeze through there to get out there on the east end there on the catwalk?

A. Yes. He would be taking his life in his hands when he went out there, too. If he waved a flag it's liable to get tangled up with high voltage.

Q. On the east side of this control tower there were a lot of cables; were there not? That's the down-river side. A. Yes.

Q. And members of the bridge tower going past the control tower?

(Testimony of Harold Benson.)

Mr. Wood: Just for the sake of the record, I believe there is confusion there. Do you mean to say east side?

Mr. White: No, down-river side, the west side.

The Witness: The cables are farther south than that, I believe. [88]

Q. (By Mr. White): Do the cables extend just south of the control tower?

A. The main junction box there is below the floor level of the control tower.

Q. The cables hang down and come up?

A. The cables droop up.

Q. So the cables that droop like that went up to the part of the span that lifted, would be on the south edge of the control tower; isn't that about right?

A. Well, I don't know, that is hard to say, whether they were on the south edge, but they were south of the control tower.

Q. Did they obstruct your view? Did you look out of the control tower at all? A. Yes.

Q. Was there anything obstructing your view?

A. Well, the steel work is always there.

Mr. White: That's all.

Redirect Examination

By Mr. Lister:

Q. I wonder if we ought to get this picture straight now. As I understand it, you said this catwalk or runway went around the building except for the southerly side of the control tower?

(Testimony of Harold Benson.)

A. That's right.

Q. Then did I understand you to say that on the upstream side or the east side that it extended out southerly from the edge of the [89] control tower?

A. Yes.

Q. How far would you say that went out there?

A. Two or three feet beyond the south side.

Q. Now keeping that—I believe you testified as to the height of the control tower above the deck of the bridge. Will you give me that again, what that was?

A. Yes, around 25 feet.

Q. Now that 25 feet, where does that represent, about where this catwalk or——?

A. That's the level of the catwalk and also the floor level of the control tower.

Q. Then if that estimate is correct, then you said that the indicator showed that the liftspan had gone up 13 and a half feet, didn't you?

A. Yes.

Q. Well, wouldn't the difference between 25 and 13 and a half, wouldn't that represent the difference between the liftspan as it came to rest and the floor of the control tower or this platform?

A. Yes, it is only that the height of the liftspan was accurate and the height of the control tower, we were merely guessing that, but that's approximate.

Q. Well, keeping those figures in mind, can you tell us about what the distance was between the platform or the floor of the [90] control tower and the liftspan when it came to rest?

(Testimony of Harold Benson.)

A. Somewheres between five and ten feet, I would say.

Q. Did you say what, if any, obstacles there were between the place where Mr. Adams stood and gave the signal and the oncoming tug and tow?

A. What was the question?

Q. What, if any, obstacles were there between the point where Mr. Adams stood signaling and the oncoming tug and tow?

A. There were steel members on the bridge.

Q. Could you take the picture and show us which one, what members there were there that would be involved?

A. Well, I don't know.

The Court: Hand him the pictures.

The Witness: I am not much on pictures.

Mr. White: I couldn't find a picture of the control tower there.

The Witness: Well, that picture there would give you a pretty clear idea of what you would be looking through if you looks towards the river.

Q. (By Mr. Lister): You are referring to Libelant's Exhibit No. 8, aren't you?

A. That's the sort of construction you would be looking through. It wouldn't be that same angle.

Q. In other words, this picture does show the toll house itself, doesn't it? [91]

A. Yes.

Q. And the toll house, you said, was about in the middle of the liftspan, didn't you?

A. Yes.

Q. And as I see this picture, you are looking toward the Oregon shore, aren't you? I notice it says, "Entering Oregon." Does that help to

(Testimony of Harold Benson.)

straighten you out on it on that sign? As you look into the picture that sign says, "Entering Oregon." Does that have any significance?

A. Well, isn't the toll house on your left there?

Q. I don't see it here at all.

A. See (indicating).

Q. Oh, the toll house, you mean? A. Yes.

Q. The toll house as you look into the picture is on the right?

A. Yes, well, that would be looking towards the Oregon side.

Q. Then the control house wouldn't actually be in this picture at all, would it? It isn't in this picture at all, is it? But you are saying that's a similar structure? A. A similar structure, yes.

Q. Went across the full liftspan of the bridge, that's what I see.

A. That's what I was trying to get over.

Q. Could you tell us with regard to the center of the liftspan—you have already said that that impact was immediately north on [92] the Washington side, didn't you, of the toll house?

A. Yes.

Q. As this equipment approached the bridge did it change its course from right to left or otherwise?

A. Well, I don't, not that I noticed.

Q. So far as you could see, it came, he was trying to go through the center?

A. As near as I could tell.

Q. Were you in a position to see the man who was operating the equipment, the tug?

(Testimony of Harold Benson.)

A. Well, I noticed there was a fellow or two on the tug, but where they was standing, I wouldn't, I don't know.

Mr. Lister: I have no other questions.

Recross-Examination

By Mr. White:

Q. I have one more. Mr. Benson, were you there right after the collision when Mr. Adams scrambled out on the span? A. Yes.

Q. He got out there pretty quick, didn't he?

A. Well, it wasn't too long.

Q. How did he get out there?

A. Crawled on some steel members there on his hands and knees and went on down, and I didn't, I wasn't taking particular notice, but I know that he was climbing around to get down there.

Mr. White: I believe that's all. [93]

Mr. Lister: That's all.

The Court: That's all, Mr. Benson. Call your next witness.

Mr. Lister: Call Mr. Dorner. [94]

W. J. DORNER

called as a witness in behalf of the plaintiff, and having been first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. Lister:

Q. You stated your name to be W. J. Dorner, did you not? A. Yes, sir.

Q. What is your business, Mr. Dorner?

A. Consulting engineer.

Q. What study and schooling have you had to fit yourself for that calling?

A. A degree in civil engineering.

Q. Where, please?

A. Oregon State College.

Q. When did you get that degree?

A. 1936.

Q. What other schooling, if any, had you had? Have you had any schooling since then?

A. No, not other than the reading of technical publications and different societies I belong to.

Q. Where have you worked? Where have you had your office?

A. I have my office in 715 Dekum Building.

Q. In Portland? A. Yes, sir. [95]

Q. Multnomah County? A. Yes.

Q. How long have you worked, how long have you been working here in Portland?

A. About three and a half years.

Q. What did you do before that?

(Testimony of W. J. Dorner.)

A. Oh, about five years in the Army and about six years with the Bridge Department of the State of Oregon, Highway Department.

Q. Does that add up to all the time since you graduated from Oregon State? A. Yes, sir.

Q. You were with the Highway Department; you were in the Army; then you came to Portland?

A. I had my office in Pasco, Washington, for about a year and a half.

Q. Where? A. Pasco, Washington.

Q. I see. What type of work had you done, what did you do when you were working for the Highway Department?

A. Bridge construction supervision and also design.

Mr. White: Also what?

The Court: Design.

The Witness: Bridge construction and bridge design.

Q. (By Mr. Lister): What did you do when you were in the Army?

Mr. Wood: We admit his qualifications. [96]

Q. (By Mr. Lister): Have you had any, have you done anything with this particular bridge prior to June 13, 1950?

A. Yes, sir, Mr. Chandler asked me to perform an investigation in 1948.

Q. What did you do then?

A. We were investigating the movement of one of the approach spans, and I made a report on the

(Testimony of W. J. Dorner.)

condition that I had found the approach spans and adjacent spans to that at that time.

Q. Can you tell us just generally what kind of a bridge is this Hood River-White Salmon Bridge?

A. Originally it was a simple, a group of simple spans from pier to pier, and at some time later the U. S. Engineers put in a liftspan in the center of the channel, in other words, made one of the stationary spans into a liftspan.

Q. Do you know how long the liftspan is?

A. 206 and one-half feet, I believe.

Q. Is there any other distinguishing feature about the bridge? You say it's a highway bridge, isn't it?

A. Yes, sir.

Q. Built for vehicular traffic?

A. Yes, sir.

Q. Is it so designed and constructed that it will withstand any reasonable—what load limit will it stand?

A. At the time the bridge was designed in 1922, it was designed on one of the older theories of design. I can't quite place [97] what the nomenclature on that theory is, but heavy loading for county bridges, I believe.

Q. What is that?

A. Heavy loading for county bridges. It is not up to the standard at the present time, but they, of course, have a load limit that restricts.

Q. When you investigated the bridge in 1948, what was the condition?

A. Structurally it was in good shape except the fact that its original design was—of course, at that

(Testimony of W. J. Dorner.)

time was very good, but, of course, loads have increased since then, and the bridge is a little bit frail under present loadings, and of course, it was vibrating, primarily due to the timber deck.

Q. What is that, please?

A. It was vibrating due to impulses from impact through a timber deck on to a structural steel truss. Now these, of course—I am talking about the bridge spans.

Q. Now when did you first see the bridge after June 13, 1950?

A. I received a call about six-thirty Wednesday morning, indirectly, from Mr. Chandler and arrived in Hood River, I believe, around ten o'clock on the 14th.

Q. Of June? A. Yes, sir.

Q. 1950? A. Yes. [98]

Q. What did you find, and what did you see?

A. Well, I met Mr. Chandler and noted the damage that had been done, and he asked me to prepare a report on my findings of the damage to the bridge.

Q. Did you do that? A. Yes, sir.

Q. Just tell us what you found and what was the condition. Do you have notes on that that you need to refer to?

A. I would rather refer to my notes I took at the time.

Q. Do you have them?

A. I believe you have them.

Q. Did you give them to me?

The Court: Mr. Wood, have you any objection

(Testimony of W. J. Dorner.)

if he refers to his notes to refresh his recollection?

Mr. Wood: No.

The Court: Go ahead, Mr. Wood has no objection.

Q. (By Mr. Lister): Now will you refresh your memory then and tell us what you found in the way of damage to the bridge?

A. Of course, damage was confined both to the downstream truss and the upstream truss. We had better take them separately so that we don't become confused between the two trusses.

Mr. Wood: If your Honor please, I don't care about any testimony about whether this truss was damaged or that truss. I think what we want to know is what it would cost to make these [99] repairs.

The Court: That is all I am interested in.

Q. (By Mr. Lister): All right. Mr. Dorner, did you supervise the temporary repairs that were made to that bridge? A. Yes, sir.

Q. We have alleged that—do you know what the cost of those repairs were? We have alleged——

Mr. Wood: Never mind what you allege.

Mr. Lister: Well, are you denying that, Mr. Wood?

Mr. Wood: Yes, I am putting you on that proof on these damages, but I don't care about a lot of details.

Q. (By Mr. Lister): Do you have a record there of the repairs that have been made, Mr. Dorner, in your notes?

(Testimony of W. J. Dorner.)

A. Yes, sir, that is in here. I believe you have a copy of my drawing which I show all the repairs that were completed.

Q. Would you help me find that.

(Colloquy off the record.)

Q. (By Mr. Lister): Now, will you tell us what was done, Mr. Dorner.

Mr. Wood: If your Honor please, I am going to try to shorten this for your Honor and counsel if you want me to.

The Court: Yes.

Mr. Wood: All I want this man to testify to is that he saw the damage to the bridge; it cost so much to make those repairs; and no repairs were included therein which were not attributable to the damage. [100]

The Court: Yes, I know that, but Mr. Lister has his own theory about how he is going to prove it.

Mr. Dorner, did you see the repairs that were performed to the bridge?

The Witness: Pardon, sir?

The Court: Did you see the repairs that were put into the bridge?

The Witness: Yes, sir, I was there during the repair period.

The Court: Did you see the bill that the General Construction Company submitted?

The Witness: I have the time sheets that I took while I was there of all the men that were on the job.

(Testimony of W. J. Dorner.)

The Court: Do you know what bill they submitted?

The Witness: Yes, sir, I know the amount of it.

The Court: What is the amount?

The Witness: There is one around. May I refer to my notes?

The Court: Yes.

The Witness: Let's see, they are not included in these here.

The Court: Do you know the amount of the bill, Mr. Lister?

Mr. Lister: General Construction Company, \$1,641.07. That's General Construction Company's bill. It has been paid.

Mr. Wood: One thousand six hundred what?

Mr. Lister: \$1,641.07. Was that a fair and reasonable charge for that work?

The Witness: Yes, sir. [101]

Q. (By Mr. Lister): Was that work necessary because of the damage done to this bridge?

A. Yes, sir.

Q. Were you familiar with the work done with the riprap, temporary use, wire rope, expense of \$71.03; is that a fair and reasonable charge?

A. Yes, sir.

Q. Was it necessary because of damage done to this bridge? A. Yes, sir.

Q. Benson Motors Service, electrician, time put in, three hours, \$7.50. Is that a fair charge?

A. I would say very reasonable.

Q. Do you have a bill, W. J. Dorner, time and

(Testimony of W. J. Dorner.)

expense in June, structural engineering and repairs,
\$268.70? A. Right.

Mr. Wood: A little more clear on your figures,
please.

Mr. Lister: \$268.70. Does that represent time
and work that you put in in connection to the re-
pairs to this particular bridge?

A. That was the preliminary work, yes, sir.

Q. Is that a fair charge for your services?

A. Yes, sir.

Q. Were your services necessary in connection
with the repair of this bridge?

A. Yes, sir. [102]

Q. Are you familiar with the bill of Pool,
McGonigle & Dick, furnishing fabricated steel parts
in the amount of \$710? A. Yes.

Q. Was that work done because of the damage
sustained by this bridge in this collision?

A. Yes, sir, they were members that they had
to replace or re-fabricated.

Q. Is that a fair charge for that?

A. Yes, sir.

Q. Joseph Holt & Company straightening by
heat control two members, \$601.25. Were you fa-
miliar with that work done by that company?

A. Yes, sir, I was there when it was done.

Q. Was that necessary because of the damage
done to this bridge in this collision?

A. Yes, sir.

Q. And is the figure charged a fair and rea-
sonable charge for that service?

(Testimony of W. J. Dorner.)

A. Yes, sir, it was.

Q. Now where we have your bill for time and expense in July, \$493.30. A. Yes.

Q. Did you perform services for this, in connection with this repair in July?

A. That was my time on the job when the different contractors [103] were performing their operations.

Q. Is that sum a fair and reasonable charge for your services?

A. Yes, sir, it also includes the reports and the final drawings.

Q. Now what have you done, if anything, in regard to these additional repairs? What do you know about that, Mr. Dorner?

A. I don't understand what you mean by additional repairs.

Q. Isn't it contemplated there will be some additional repairs to this bridge? A. Yes, sir.

Q. What do you know about them?

A. Very little, other than the fact that they will be required to bring the span back into its condition equally to what it was before the collision.

Q. In what way is it not now in the condition it was before the accident?

A. We performed a splice in the lower cord on the downstream draws which is more or less of an expedient which allows us to use the bridge to its fullest capacity, but at the same time it is not, it destroyed the continuity of the lower cord and

(Testimony of W. J. Dorner.)

should be replaced in order to—I don't think it is necessary to be replaced—let me state that over. To bring the camber of the trusses back to something that would be more or less the original condition we should replace this splice of the lower cord and restore the camber to its original position.

Q. What do you mean "camber," Mr. Dorner?

A. Camber is the amount of crown in a truss that is put in at the time of its construction to—in other words, a positive camber is put in, every center of your bridge is always higher than the ends. In other words, the positive camber is put in there for the purpose of not letting a sag develop in the lower cord.

Q. Do I understand correctly if the bridge does not have a certain amount of camber, as you call it, it will soon sag and be unfit for use; is that correct?

A. Well, the camber, if it becomes negative, helps to hasten the deterioration or the failure of the bridge due to the impact stresses that may, that are developed in the structure.

Q. What, if any, study have you made to determine the nature and extent of the loss of camber in this bridge?

A. I ran a line of levels over both trusses, the upstream truss and the downstream truss, to determine how much camber remained in both trusses. and one of them was, the upstream truss, two and a quarter inch camber, and the downstream truss, two and a quarter, but the downstream truss didn't

(Testimony of W. J. Dorner.)

come in a true arc. It had a sag at the point of the splice.

Q. What is the significance of that, Mr. Dorner?

A. Well, we have probably—it's hard to say other than we assume and think that our stress distribution through the truss has been affected to a certain extent which is not—there is [105] no feasible way of actually determining it, but there has been a distortion from the original, from the time that the truss was sprung and its original construction that, perhaps a slight misalignment or this slight misalignment has produced stresses other than——

Mr. Wood: I can't hear you, has produced what?

A. Has produced stresses possibly greater in some members than are originally designed for.

Q. Is that because of the collision?

A. Yes, because the downstream truss definitely does have a sag at the splice point. I might mention the fact that after a truss is sprung and the falsework has been kicked out your stress in a member will vary considerably with just a very small movement of what we call the panel point.

Q. Well now, you have observed that bridge. Do you want to tell us—how much effort have you made to determine whether or not it is necessary to do anything more to make the bridge in substantially the condition it was before this accident?

A. I believe it is necessary to bring the camber back up to a point that it was before the collision at least.

(Testimony of W. J. Dorner.)

Q. How can that be done?

A. Well, we have no way of determining how much was lost due to the collision, but the only way to put camber back into a truss is to put falsework under it and support it while the truss is——

Q. Have you seen these figures given by the General Construction [106] Company regarding the procedure to be used and the cost of putting the falsework in there?

A. Yes, sir.

Q. Is there any other practicable way to do that?

A. No.

Q. Can it be done any more economically?

A. I would say not.

Q. What is the fact as to whether or not until that is done that, as you say, camber restored, will that bridge be in substantially the same condition it was before this accident?

A. Well, the question is to restore, the bridge is not or cannot be restored to its condition before the collision until the camber is replaced.

Q. Well, is there any other way to do it than suggested by Mr. Hermann?

A. I would say that there are other ways to do it, but I would say that that would be far beyond the realm——

Q. I mean, is there a more economical way of doing it?

A. No, there is none.

Q. Now when this work is done as indicated by Mr. Hermann, testified to by him, then what will you have to do in the way of putting the bridge

(Testimony of W. J. Dorner.)

back in its original condition, the condition it was before this accident?

A. Well, Mr. Hermann will perform on his estimate there for placing of the falsework under the bridge, and then after the [107] falsework is in place each panel will have to be jacked up to the height that you want it, and the splice taken out and the new member put in to the full extent on the lower cord.

Q. How long a member would that require?

A. Well, it would be made out of 40 foot sections.

Q. How many sections would you need, what would be, would you have to put in the full 260 some feet? Would you have to put a member clear along the——

A. No.

Q. How far would you have to make it?

A. Well, the new lower cord would have to be roughly around 40 feet long, a little less than 40 feet.

Q. Did I understand you to say that the member you would have to renew, to put in, would be 40 feet long?

A. Yes, sir, it is continuous from two panel points.

Q. Could you tell us, it has been estimated that in order to put this member in after, separate and apart from what Mr. Hermann plans, has testified to, over and above the work he is going to do, would cost some 37 hundred——

Mr. Wood: I think that's too leading.

(Testimony of W. J. Dorner.)

The Court: That is clearly objectionable, Mr. Lister.

Q. (By Mr. Lister): All right, can you give us an idea as to the cost of replacing this member separate and apart from the work that Mr. Hermann has testified to in regard to putting in and removing the falsework? [108]

A. Well, after this falsework is in place then some other contractor or whoever does the work would have to remove the existing member that is spliced.

Q. What would be a fair and reasonable cost for doing that type of a job?

A. Well, that would depend some on the availability of the contractor at that time, but I would say between three and four thousand dollars.

Q. Do you know of any other—was there some damage to some conduits or something there that has been reported or that should be reported, Mr. Dorner?

A. Yes, sir, I was engaged to determine the structural damage, but I did make some notes regarding the other damage that I noted.

Q. Will you tell us what it was, please?

A. There is a group of five conduits, electrical conduits, which control or house the electrical circuits that are operating in the toll house. This nest of conduits was pretty badly beaten up by the boom striking it, and they were torn out of position and bent very badly. Two panels of cord rail and hand rail on the downstream side of the truss were

(Testimony of W. J. Dorner.)

practically destroyed. There was some damage to the toll house.

Q. Would you be in a position to give us an estimate of what would be the reasonable cost of repairing that back in its original condition? [109]

A. Well, I made a note at the time I made the investigation that the toll house could, perhaps, be fixed for \$25.00. I didn't make the estimate on the electrical repair, but I would say that, possibly, \$150 or \$200 would cover that.

Mr. Lister: I think you may cross-examine.

Cross-Examination

By Mr. Wood:

Q. I only have, I think, one question to ask, and I thought you said that you didn't know how much camber there was in the member before the collision. Did you say that? A. I did, yes, sir.

Q. If you don't know how much camber there was there before the collision, how do you know what you have got to do to put the camber back in the condition it was before the collision?

A. Well, according to my camber observations, the two trusses do have different camber, and there is quite a difference in camber between the downstream truss at the point of splice than there is in the upstream truss.

Q. They should be alike, shouldn't they?

A. Normally they should be alike. We would assume that both trusses would take the same.

(Testimony of W. J. Dorner.)

Q. Do I put this accurately then, because the downstream camber, member that has been spliced has a less camber than the upstream one, you infer that the camber in the downstream one has been reduced that much; is that it? [110]

A. That's right.

Q. You want to put one in where they would both be alike; is that right?

A. We would like to restore the camber such that it would be alike all the way through, and the only way to do that is to replace this other member.

Q. And to make it like the upstream one?

A. That's right.

Q. My associate here suggests that you said that the camber in the two members, the upstream and the downstream one, were the same, two and a quarter inches I believe, except that the downstream one sagged a little where this splice was; is that right?

A. That's right, sir.

Q. That's all.

Cross-Examination

By Mr. White:

Q. Didn't you also mention that you did not know, that because that little sag existed you could not or you did not know whether there were any internal stresses or any kind of stresses that would affect the bridge; it was speculation on your part?

A. Well, that's a difficult point to prove.

Q. No, but you don't know it, do you; isn't that what you——

(Testimony of W. J. Dorner.)

A. There is no physical way of proving that.

Q. No.

A. But innumerable tests have been made on the distortion in joints [111] and their influences on stresses to members.

Q. But it is in the realm of conjecture, nevertheless; isn't that right?

A. No, it has been physically shown that a distortion in the panel point will produce stresses that were not calculated for.

Q. May produce stresses; isn't that correct? It doesn't always produce stresses?

A. Well, nothing is "always," no.

Q. So isn't it fair to say that insofar as this collision affected the bridge, it did not disturb the camber, but it did affect a segment, a little sag on that lower cord only?

A. No, I wouldn't say that because I have no way of knowing what the camber was in the bridge before the collision occurred. On the upstream truss one vertical post and one horizontal strut were completely severed from the continuity of the truss. In other words, they were broken off entirely. Now how much settlement that caused in that upstream truss I have no way of telling other than the fact that we do know that the camber is way short of what it was when it was put in.

Q. What was the camber when it was put in?

A. Three and three-quarters inches.

Q. When was it put in? Do you know when that bridge was built?

(Testimony of W. J. Dorner.)

A. Well, I think that was the time that the U. S. Engineers put in the liftspan. I think that was in—I am guessing now.

Q. The early 30's, was it? [112]

A. In the early 30's, something like that.

Q. And as a bridge is used, camber, just like a spring, tends to go out, right?

A. It does to a certain extent.

Q. This is a structure which has been getting heavy loads, as you have testified earlier, maybe heavier loads than it was designed for? Wasn't that the gist of your early testimony?

A. Well, they have a load limit on the bridge, and very few loads that are over the load limit are on it. In other words, the bridge is posted on both ends.

Q. So the camber when it was first built was three and a quarter inches, and now it is two and a quarter inches?

A. Three and three-quarters inches.

Q. Three and three-quarters inches. Now it is two and a quarter inches; is that right?

A. Well, that is correct, excepting the fact that the downstream truss, the camber has a wobble in it.

Mr. White: That's all.

Redirect Examination

By Mr. Lister:

Q. When you said it had a wobble in it, as I understand it, normally the bridge which is built

(Testimony of W. J. Dorner.)

on that sort of an arc would settle down, and the arc would still be a symmetrical design?

A. That's right.

Q. That is true of the upstream side of this bridge at the [113] present time?

A. Yes, sir.

Q. But on the downstream side instead of being symmetrical at the point where this impact occurred there is a sag in this curve, what you might call it; is that a fair way of stating it?

A. That is correct.

Q. So that there won't be any mistake now, you said you didn't know what stresses would be set up. Is there any doubt in your mind as to whether or not it is necessary to restore this so-called symmetry or this loss of camber at this particular point in order to put the bridge back in reasonably the same condition it was before this accident?

A. It would be necessary to do that work to make the truss in a condition equal to it before the accident.

Q. Is there any other material, is there anything other that we should know about that would be significant in determining whether or not they could get by as they now are, or whether there should be more work done that you haven't brought out here?

A. No, I don't believe so, other than the fact that it would take the placing of falsework underneath the span, the jacking of the span——

(Testimony of W. J. Dorner.)

Q. Would you as an engineer have any idea how long a time it would take to place this falsework, make the repairs, and remove the falsework?

A. Well, I would say that the placing of the falsework would be, [114] would take a large part of the time. Perhaps in a matter of four or five days the member could be replaced.

Q. You mean if the falsework has been put in?

A. After the falsework has been put in. The placing of the falsework, of course, would be the most difficult due to the fact that the waters—it would take false piling probably around 110 feet long.

Q. Now this member that is needed there could be fabricated and be available to be put in immediately as the falsework has been placed and the member jacked up?

A. That's right, it could be prefabricated, excepting that on one end we would have to field bore the holes in order to get the alignment perfect.

Q. Is there any damage at the ends of this liftspan resulting from this collision?

A. Yes, the guide shoes on the liftspan on the downstream side on the lower cords were bent outward considerably, due to the fact that the impact of the boom against the side of the lower cord. The pulling of these guide shoes distorted and bent the diaphragms inside the gusset plates at the L-zeros on the downstream truss.

Q. What would be the cost of repairing that particular damage?

(Testimony of W. J. Dorner.)

A. That could not be accomplished unless the center of the span were, or the span was swung on falsework because, as the truss now stands, if you were to sever the sections between the [115] lower cord and the panel on the end point, the end frame, you would lose your bridge, and that, of course, could not be done unless the center was supported.

Q. Well, suppose the same support then, that you have mentioned to support the, to renew the camber, would that be a sufficient support to do this other work? A. Yes, sir, because——

Q. Well, after you got that done, then what would it cost to make the repairs that you are now indicating at the end of the span?

A. Well, from the materials standpoint the material would be practically negligible because the diaphragms consist of very small pieces of plate and angle, but the time and expense of taking all the rivets out that hold that piece in, the diaphragm in place, and then the time to replace the rivets into the new piece, it would be entirely a labor charge. It might take a couple of days, two or three days to do the both ends.

Q. Well, can you give us—what would be a fair and reasonable charge for that type of repair?

A. Oh, I would say four or five hundred dollars, perhaps.

Q. As I understand it, that cannot be done as the bridge now sits there?

A. It cannot be done as the bridge sits there, no.

(Testimony of W. J. Dorner.)

Q. Why did you say that was necessary? What difference does that make? How does that impair the efficiency and effectiveness [116] of the bridge?

A. Well it is not impairing the efficiency of the bridge particularly. It is a matter that should be done when the lower forward splicing is removed and replaced with a new member. Admittedly, it is not as good in condition as it was before the collision, but it is one of the things that resulted from the collision and the diaphragm is there for a purpose, to keep the gusset plates from buckling, and even though they are more of a matter of, as a factor of safety, from the overall picture they should be replaced.

Q. Now does that give us a full picture now of the condition of the bridge as it now sits and in which it was prior to this accident?

A. There is one gusset plate on the upstream truss that is pretty badly damaged. The boom hit the downstream truss, apparently went across the deck, and hit in the center of one of the gusset plates on a vertical and a horizontal member on the upstream truss, and in doing so it tore out a part of one of the gusset plates at what we would call M-7, which is a main gusset plate at the center of the span midway between the upper and lower cords. That gusset plate has been temporarily spliced and repaired, but we have no way of knowing the continuity of the stresses in the members surrounding that gusset plate. That gusset plate, too, must be repaired—or replaced.

(Testimony of W. J. Dorner.)

Q. Can that be done without lifting the center of the bridge? [117]

A. No, sir, that cannot be done either because it is one of the control points in the truss. Without you were to loosen all the members in that span, why, your bridge would probably fall.

Q. Now is there anything else?

A. I don't believe so.

Mr. Lister: You may inquire.

Recross-Examination

By Mr. Wood:

Q. If there had been no collision, this bridge had a certain life span ahead of it, didn't it, a life expectancy? A. That's right.

Q. How long would that have been?

A. Well, that depends entirely on——

Q. Oh, just now give me your best estimate, not a long speech about it.

A. I wouldn't want to answer that because it depends on a lot of factors.

Q. You cannot make——

A. You see, the Highway Department figures that the life expectancy of one of their bridges is 15 to 20 years. It does not become obsolete because of the fact that the structure is not in a sound condition, but it has outgrown itself, or the traffic it has to bear has gone beyond its design.

Q. Let me ask you this then. You cannot give us any estimate [118] of the life expectancy of this bridge then; is that right?

(Testimony of W. J. Dorner.)

A. Well, I would say the bridge should last 50 years.

Q. Fifty?

A. Surely, there is lots of bridges around that are 50 years old giving satisfactory service, steel bridges.

Q. You think this one would have lasted that long, do you?

A. With proper maintenance, yes, it would.

Q. All right now, I just want to ask you this. It has been repaired now, and it is in use, isn't it?

A. That's right.

Q. And heavy traffic is going over it, isn't it? The same traffic is going over it as went over it before, isn't it?

A. That's right.

Q. Well then, in its present repaired state is its life expectancy any less than it would be if you did all this expensive work of putting a falsework under there and a new camber and all that?

A. I would say yes.

Q. That's all I want to know. Thank you.

Mr. White: No questions.

Mr. Lister: That's all.

The Court: Have you any other witnesses, Mr. Lister?

Mr. Lister: I am going to call Mr. Chandler. I have one other.

The Court: We will take a ten-minute [119] recess.

(Thereupon, at 3:45 p.m., a recess was taken.)

The Court: By agreement of the attorneys, we will now recess until nine-thirty tomorrow morning.

(Thereupon, the trial was recessed to 9:30 a.m., Friday, January 26, 1951.) [120]

Morning Session

(Friday, January 26, 1951, 9:30 a.m.—trial resumed.)

The Court: Mr. Lister, you may proceed.

Mr. Lister: Call Mr. Chandler.

E. M. CHANDLER

called as a witness in behalf of the plaintiff, and, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. Lister:

Q. You state your name to be E. M. Chandler; have you not? A. Yes, sir.

Q. What relationship do you bear to this Oregon-Washington Bridge Company?

A. Well, I am president and its engineer in charge of the bridge since it was started.

Q. What, if anything, do you have to do with building, with this Hood River-White Salmon Bridge?

A. Well, I originated the idea of the bridge in the first place, designed it, raised the money, built

(Testimony of E. M. Chandler.)

it and operated it ever since, and also rebuilt it on account of Bonneville Dam.

Q. When was it first built?

A. It was opened to traffic in December, 1924.

Q. When did you say it was rebuilt?

A. Well, that was over a series of years. In fact, it is not [121] quite completed yet, but the liftspan was completed in April, 1940.

Q. What did you do before you became, before you started in to work with this bridge project? What schooling have you had, Mr. Chandler?

A. Well, I graduated in civil engineering from the University of California over 40 years ago and have been engaged in engineering or the administration of engineering projects ever since.

Q. Can you give us any specific work you have done other than the work on this particular bridge project?

A. Well, the job immediately preceding the work on this bridge was executive—I had the detail, acting secretary, and I was executive officer of the American Society of Civil Engineers in New York.

Mr. Wood: Pardon me. Is the purpose of this to show he knows all about bridges? Because if you want, I will admit that he knows all about bridges.

Mr. Lister: All right.

Q. (By Mr. Lister): Mr. Chandler, you supplied me with a blueprint here. May I present it to you for your inspection.

(Testimony of E. M. Chandler.)

(Document, blueprint of Hood River-White Salmon Bridge, marked Libelant's No. 14 for identification.)

The Court: Have you seen the exhibit, Mr. Wood?

Mr. Wood: I saw it just briefly yesterday, [122] yes.

Mr. Lister: Didn't we show it to you in your office that day, too; Mr. Wood? I think we did.

Mr. Wood: At any rate, I am not going to object to it.

The Court: Are you offering it, Mr. Lister?

Mr. Lister: We offer that.

The Court: All right.

Q. (By Mr. Lister): What is it, Mr. Chandler, that is marked Libelant's Exhibit No. 14?

A. This is Sheet No. 35 of our set up plans for the liftspan installation. It's the general plan.

Q. Of the Hood River-White Salmon Bridge?

A. No, the general plan of the liftspan installation which was carried out as a separate job.

Q. For what bridge?

A. For the Hood River-White Salmon Bridge.

The Court: When was that—

Q. (By Mr. Lister): Did you prepare that, Mr. Chandler; did you have that prepared?

A. Yes, it was prepared either by me or under my direction. I didn't do all that work, of course.

Q. Now what does that show with regard to the bridge as in relation to the condition of the bridge

(Testimony of E. M. Chandler.)

on June 13, 1950? Didn't you tell me there were a few differences there? For instance, where is your toll house there as compared to where it was in June, 1950? [123]

A. Well, on this plan the toll house is shown to be on the first span north of the liftspan. It was constructed that way, but in 1949 we moved it to the center of the liftspan.

Q. All right, what, if any, other changes are there in the bridge as it was in existence on the 13th of June, 1950, that is different from what is shown there on that Exhibit 14?

A. Well, for the moment I can't think of any.

Q. All right now, can you show us then on that liftspan where the toll house is located, on the Exhibit 14 where the toll house is located?

A. Yes, do you want me to show it physically?

Q. Describe it.

The Court: Make a mark.

Mr. Lister: Mark it some way.

The Witness: It's located right in the center of the liftspan. (Marks on exhibit.)

Q. (By Mr. Lister): How did you mark it?

A. I marked it with a circle right at the center of the liftspan.

Q. Now, that's the toll house?

A. That's the toll house.

Q. Now where is the control house?

A. Well, we called that the operator's house. It is in the north tower up about 25 feet above the roadway.

(Testimony of E. M. Chandler.)

Q. Can you identify it by a mark?

A. Well, it is shown on the drawing. [124]

Q. Is it described by, what letters are there?

A. Well now, there are no letters. It's just illustrated as to how it looks.

Q. Is it marked though so that anybody looking at that exhibit can identify the control house that we have been talking about here in evidence?

A. Well. I should think so.

Q. Well, kindly mark it some way so that there will be no mistake about it. A. All right.

Q. Put an "X" there, Mr. Chandler.

(Witness marks on exhibit.)

A. All right, I put an "X" there and marked it "Operator's House."

Q. That's the same that has been referred to in evidence as the control house or control tower?

A. Yes, I believe they have been calling it that here.

Q. All right now, does that drawing show the various members of the bridge that would be between that toll house on the downriver side of the bridge?

A. Well, yes, it shows the frame work of the tower.

Q. Can you tell us just what was the situation on June 13, 1950, with regard to obstructions or any of the bridge members or anything like that that would be between the toll house and the downstream—— [125]

(Testimony of E. M. Chandler.)

Mr. White: Your Honor, I object to that question on the ground that this plan speaks for itself, if it shows that, and what Mr. Chandler can add to it is immaterial.

The Court: Well, it may be difficult to tell from the drawing itself. Let him explain the drawing.

The Witness: There is a vertical post, steel member right at the corner of the tower, the southwest corner of the tower, and there is also a diagonal member that would form a partial obstruction to the view.

Q. (By Mr. Lister): In what way does that diagonal member run?

A. Well, it starts at the bottom of the post, at the level of the operator's house, and goes in a diagonal direction up about 25 feet northward.

Q. Does it slant? A. It slants northward.

Q. Slants northward? A. Yes.

Q. It begins at the bottom of a post, you say, described as being at the southwest corner of the toll house? A. That's right.

Q. And then runs diagonal to the north?

A. That's correct, to the post on the northwest corner of the tower.

Q. Is that post substantially on the same plane north and south as the south post is? [126]

A. Yes, exactly.

Q. It is due north of the south post?

A. That's right.

Q. Now as that level of the bridge or the span raised would that put any additional obstruction

(Testimony of E. M. Chandler.)

between the person standing there at the operator's house and someone coming up river?

A. Well, not for a height of 13 feet.

Q. You have heard the description of the so-called catwalk or walkway around this toll house. Will you tell us how it appeared as far as you saw it?

Mr. White: May I ask if that appears on this plan? We will see the plan with the witness. Is that there?

Q. (By Mr. Lister): You have heard them tell about this walk on which Mr. Adams stated he tried to signal this equipment. Does that show on the plan?

A. No, this is the general plan. We have subsequent drawings which show the detail of it.

Q. Can you tell it, describe it to us without—do you need a plan or a blueprint to describe that part?

Mr. Wood: It seems to me it is already fully described, your Honor.

The Court: Yes, well, let him go ahead.

The Witness: Well, it's a wooden platform of fireproof material that was designed first off as a sort of porch or platform to get access to the operator's room. The door to that [127] room is on the east side or east end, and then the platform extends around the north side. It is quite narrow, about two feet, connects with the platform that is on the west side of the operator's house where there are three transformers that belong not to us but to the

(Testimony of E. M. Chandler.)

power people, originally Pacific Power and Light Company, now PUD of Klickitat County No. 1.

Q. (By Mr. Lister): Now could you say if one were standing on the south end of that platform what obstruction would there be between that person and one operating equipment up-river toward the bridge? Did you get my question?

A. I don't know if I understand it. Do you mean traffic on the river coming from upstream?

Q. No, if a person were standing on the southerly end of this platform as described by you and Mr. Adams, what obstructions would be between that person and the operator of a tug or—moving upstream toward the river easterly?

A. Well, as I have already described, there would be this vertical post in the tower and also one diagonal member.

Q. Well now, as I understand it, the platform extends southerly from the edge of the operator's—what do you call it, the operator's—

A. The operator's house.

Q. Operator's house. Where is this vertical post in regard to the southerly edge of the operator's house?

A. Well, it would be in a southwesterly direction, probably 20 [128] feet away.

Q. Well, with regard now to the southerly end of this platform, would the vertical post be north or south from that southerly end of that?

A. This vertical post would be south and west, mostly west.

(Testimony of E. M. Chandler.)

Q. How far west, Mr. Chandler?

A. Well, not over 20 feet.

Q. How far south?

A. Well, not over eight or ten feet.

Q. What about the dimensions of that upright, the member that you have described?

A. I don't remember, but it's pretty heavy. It carries the whole load, that is, one-quarter of the whole load of the liftspan, lifting it. I think, but it's only from recollection, I think it's probably an H section, 14 inches by 14 inches, carries a very heavy load.

Q. What would be the dimensions of this other member you have described?

A. Well, that would be much lighter.

Q. Give us your best memory?

A. I don't really remember, but it would not be half as big.

Q. I believe Mr. Dorner covered the length of that liftspan. Do you have the information there on that drawing?

A. Well, it's 262 feet 6 inches from center to center of the piers. [129]

Q. Now, when did you first get to the bridge after this action occurred on the 13th of June?

A. About two o'clock the morning of the 14th.

Q. What did you find when you got there?

A. Well, it was so dark I couldn't see very much of anything so I went to the hotel for about three hours, went back there and things looked pretty badly wrecked.

(Testimony of E. M. Chandler.)

Q. Just tell us what you found, what you saw at that time?

A. Well, the most noticeable thing immediately was the horizontal strut as it is called. That was knocked completely out.

Q. Where was that located now with regard to this Exhibit 14?

The Court: Now, Mr. Lister, as I understand it, Mr. Wood admitted the damages or admitted that certain repairs were done temporarily, and that they needed to be done.

Mr. Wood: That is correct.

The Court: So if the witness is going to testify as to the damage that was already repaired, it is superfluous.

Mr. Lister: All right, if that's the understanding of the Court, then we won't worry about that. Mr. Clerk, will you show the witness those exhibits, those pictures 1 to 11, please?

Q. (By Mr. Lister): Now, the No. 1, I understand you didn't yourself take the picture, did you?

A. It's the only one I didn't take.

Q. But you obtained that, did you not, from a photographer?

A. A photographer from a newspaper furnished it to me, newspaper [130] photograph.

Q. The others you took yourself? A. Yes.

Mr. Lister: We are going to offer those pictures in evidence, if your Honor please.

The Court: They are already received.

(Testimony of E. M. Chandler.)

Mr. Lister: I didn't understand they were received.

The Court: Are you offering the blueprint?

Mr. Lister: Yes, I did offer that, if your Honor please.

The Court: You didn't permit me to rule on it.

Mr. Lister: I am sorry, I want to offer that in evidence.

The Court: It may be received.

(Thereupon, the document formerly marked Libelant's No. 14 for identification was received in evidence as Libelant's Exhibit No. 14.)

Mr. Wood: Apropos of that, your Honor, the Reporter called my attention, or the Clerk did, we offered yesterday the statement of Mr. Adams, a written statement, and it was marked as Respondent's Exhibit 1, but they called my attention this morning to the fact that your Honor did not formally admit it, so I would like that done now.

The Court: Well, Mr. Wood, I believe that Mr. Adams admitted that he made the statements which are contained in the written statement. Having so admitted it, I don't know whether the actual statement itself is admissible. It was done for the [131] purpose of impeaching Mr. Adams.

Mr. Wood: That's right.

The Court: He has admitted that he made that statement.

Mr. Wood: That's right.

The Court: Now, what evidentiary value——

(Testimony of E. M. Chandler.)

Mr. Wood: If that's the situation, I think you are right.

Mr. White: My thought, your Honor, is that while Mr. Wood did call the witness' attention to one particular item, that statement is in several other respects, to the best of my recollection, inconsistent with the other phases of his testimony.

The Court: Yes, but then it is up to you or Mr. Wood to interrogate the witness about that. He is here.

Mr. Wood: I think your Honor is right on that.

The Court: You may proceed.

Mr. Lister: Those exhibits were offered yesterday, all those exhibits have been offered as I understand?

The Court: That's right.

Q. (By Mr. Lister): Mr. Chandler, I think one of those pictures shows the point of impact, doesn't it?

A. Yes, the one that is marked No. 6 shows where the railing is broken and the wheel guard and other damage.

Q. Does that show the toll house? A. Yes.

Q. Well, what I want to ask you now, where is that with regard to the middle of the lift span, the point of impact there? [132]

A. Well, it is just a short distance north of the center of the lift span?

Q. Of the lift span? A. Yes.

Q. With regard to the middle of the bridge,

(Testimony of E. M. Chandler.)

where is the lift span? Is the lift span right in the middle of the bridge?

A. Well, not exactly. I have another picture here that illustrates that. It is marked No. 10.

Q. Is the lift span across the channel of the river?

A. Yes, it was divided, the center of the lift span is theoretically the boundary line between the two States.

Q. That's supposed to be the center of the stream?

A. Well, it was the center of the thread of the current at the time the bridge was built. The river has been changed now on account of the Bonneville Dam somewhat.

Q. Mr. Chandler, do you have that list where we have the itemized breakdown of the cost of the permanent repair?

A. No, all the papers are in front of you.

Q. Will you show this to the witness, Mr. Clerk?

(Document, listing temporary repairs marked Libelant's No. 15 for identification.)

Q. (By Mr. Lister): You are looking now at a paper that is marked Libelant's Exhibit 15?

Mr. Wood: May I interrupt. Your Honor, this is a list of repair items that were testified to yesterday. I don't know [133] what the purpose now is of showing it to Mr. Chandler, but if the idea is to show that they were necessary and reasonable, I don't care to have him go over every item again.

(Testimony of E. M. Chandler.)

If Mr. Chandler would look at that paper and say these are the items of temporary repairs that were necessary and reasonable, why, that's all I care about.

Q. (By Mr. Lister): Will you look at that list, Mr. Chandler? A. Yes, I have.

Q. Does that represent the outlay for temporary repairs on the Hood River-White Salmon Bridge?

A. Yes, I called it emergency repairs, and I prepared this statement.

Q. And have all those items been paid by you?

A. Yes, by the Bridge Company.

Q. Were those various items that go into that list necessary to, as you say, make emergency repairs to this bridge? A. Absolutely.

Q. Were the charges fair and reasonable for the work? A. Very much so.

Q. There is one or two items on there that Mr. Dorner didn't mention.

The Court: Well, then, Mr. Wood is not asking you to explain those items.

Mr. Lister: All right.

The Court: It may be admitted. [134]

(Thereupon, the document previously marked Libellant's No. 15 for identification was received in evidence as Libellant's Exhibit No. 15.)

Mr. Wood: I only wanted him to say whether or not they were all collision repairs and nothing else included.

The Court: Is that true, Mr. Chandler?

(Testimony of E. M. Chandler.)

The Witness: Well, yes, there might be one exception. I have got a small item here, \$4.00 for photographs. One of them is in the exhibit here. That's the only exception I can think of.

Mr. Lister: Will you present this to the witness?

The Court: All right, show it to Mr. Wood, first.

Mr. Wood: Those are the Bridge Regulations. The Court takes judicial notice of them anyway.

(Document, Bridge Regulations, marked Libelant's No. 16 for identification.)

The Court: Are you offering it?

Mr. Lister: Yes, Libelant's Exhibit 16.

The Court: It may be admitted.

(Thereupon, document previously marked Libelant's No. 16 for identification was received in evidence as Libelant's Exhibit No. 16.)

Q. (By Mr. Lister): Now, Mr. Chandler, did you keep a record of the times the bridge up there, the lift span, was raised for traffic?

A. Well, it's a requirement of the War Department that we keep [135] a log book and put a record in it of every time it has been opened for any commerical purpose.

The Court: Hasn't that been admitted already? Had not the Respondents agreed that the plaintiff has inspected the lift body and that the only cause of the accident was the power failure?

Mr. Wood: I think that is substantially true. The Regulations require them.

(Testimony of E. M. Chandler.)

Mr. White: Yes.

Mr. Wood: The Regulations require them to make frequent tests of this lift span to see if it is working all right. Now, I don't know whether they did or not, but they have testified that they made a test two or three days before this and everything worked all right, and the only cause was the power failure. We have got no evidence to dispute that.

The Court: No need of going into that any more, Mr. Lister.

Mr. Lister: All right.

Q. (By Mr. Lister): Mr. Chandler, has there, at any time prior to June 13, 1950, has there at any time been any failure of this lift span to operate properly?

A. Well, there have been several times when it has been out of service, and we have notified the War Department, also a list of users of the river that the War Department has given us, that it was out of commission for one reason or another. For example, when we changed the location of the toll operator's house we had [136] to do a lot of wiring——

The Court: What purpose is that for, Mr. Lister?

Mr. Lister: If your Honor please, Mr. Wood will contend, I understand, and the defense he seems to rely upon to the effect that we should have been advised to have had some kind of auxiliary equipment there to notify and warn this oncoming tug and its tow.

(Testimony of E. M. Chandler.)

Mr. Wood: Yes, we make that contention.

Mr. Lister: All I wanted to ask this witness is what has been the experience there, if they had any thing to put them on notice that a warning device be needed.

The Court: I think, perhaps, you ought to confine your questions to the number of power failures that took place prior to this time.

Mr. Wood: I would not think it ought to be confined to that, your Honor, because anything that impaired the lifting of that span, whether it was their own machinery getting out of order, which might happen, or power failure or anything else, would require them to have some auxiliary or some kind of notice there to signify——

The Court: Well, I don't believe, Mr. Wood, that merely because the span has operated in the past is any indication it may not fail in the future.

Mr. Wood: I don't either.

The Court: So that if a auxiliary horn or some signal is [137] the standard of care is applicable, if you have it, regardless of whether the span operated in the past, I don't know whether that is necessary under due care, but you can go ahead and show what you want.

Q. (By Mr. Lister): Well, Mr. Chandler, will you tell the Court whether or not at any time—go ahead, you said that at one time you had to stop the movement of traffic because you were moving the toll house?

A. Yes, we have had to shut down operation of

(Testimony of E. M. Chandler.)

the lift span. That is, it was inoperative on account of repairs in several cases for some periods of time, but we make, we notify the War Department and also the users of the bridge in accordance with the requirements of the War Department.

Q. Well now, you said you moved the toll house. Did you ever have a failure because of lack of power for this bridge to operate, so far as you know?

A. Yes, when the installation was first completed we built this high-powered line, 6600 volts with a metal conduit passing into the bridge on the Washington side about half a mile north, and every time there was an electrical storm on the system, which was quite often, we would get a short circuit in it, and we finally had to abandon it and take all of the wires out of this conduit and put them on brackets that were attached to the bridge, and since then we have had no trouble from that source. In other words, separate the wires instead of having all three of them come [138] close together inside of that one metal conduit.

Q. Where there any other?

A. I can't think of any other. We were shut down several times, for several weeks, making this installation, changing the lift span, but there has never been any failure that I have any knowledge of in connection with the actual operation of the lift span. When we start to lift it, why, it is lifted.

Q. Those that you related are the only failures

(Testimony of E. M. Chandler.)

of any kind or any that you can remember now; is that correct? A. That's all I can recall.

Q. Now, what did you have there in the way of signals for people who were moving traffic through this span? What was the situation with regard to signals? A. You mean for river traffic?

Q. Yes, sir.

A. Well, in designing this lift span, it was done in conjunction with the War Department because they paid for it by means of special authorizations of Congress. We exercised the greatest possible care in trying to figure out every possible contingency, and answering your question more specifically, we installed a light in the center of the lift span so that when you start to lift the span it goes on automatically and remains red. When the lift span goes clear to the top it turns green. Now, this span was designed for ocean-going vessels. Unfortunately, there have been none since the span was built, and it has only been used since for [139] crossings or lifts something similar to this where a pile driver derrick or something like that that needs a little lift to let it through, and in most cases and in practically every case except one, it has not been lifted to the full height, and so there is a light appearing in the center of the span.

Q. What is the nature of that light?

A. Well, it is inside a receptacle, that is, a sort of a cylinder whereby it has a glass on the downstream side, another on the upstream side, that re-

(Testimony of E. M. Chandler.)

flects, a reflector inside so that it is quite a bright light.

Q. Well, were there any lights on the ends of the piers?

A. Lights are on the piers, but they are turned on manually at night so as to guide the navigation so that they can see the piers and not run into them.

Q. How would that light on the bridge there, for instance, compare with one of these traffic control lights in the street intersections?

A. I would say it was much brighter. I have seen it riding by on the Union Pacific train. That's quite a ways away.

Q. What did you have there in the way of a horn or a whistle or device of that kind?

A. Well, our plans called for, and it was installed, an air whistle. It's a very loud one that is operated by a motor and a compressor, but, of course, it was inoperative in this case because the power was off. [140]

Q. Well, did that operate on the same, from the same power that ran your lift to the bridge?

A. That's right.

Q. Was there any other power there available?

A. Any other?

Q. Was there any other electrical energy available there on the bridge when this power failed?

A. No.

Q. What, if any, procedure did you use to notify traffic to come on when you had the bridge in position for the traffic to move under the lift span?

(Testimony of E. M. Chandler.)

A. You are speaking of river traffic?

Q. Yes, sir.

A. Well, it had become a standard practice to blow the whistle twice, two short whistles, before the river traffic started to go through.

Q. Was this the whistle you were speaking about, the whistle you mentioned a while ago being a loud shrill whistle? A. Yes.

Q. Now, will you tell us, Mr. Chandler, are you familiar with the bridge in its present condition after these so-called emergency repairs had been made? A. Yes, very familiar.

Q. All right, have you made some estimates as to the cost of doing the additional repairs to put it back in the condition it [141] was before this accident? A. Yes.

Q. Do you have those available?

A. Well, I am—I have not got them. I think you have them.

Mr. White: Is this in addition to what the testimony has been? Is this some new damage, or is this recapitulation?

Mr. Lister: No, this is additional.

Q. (By Mr. Lister): Could you help me find that, Mr. Chandler? I think I have it now. Would you need all those papers?

A. I don't know what you want, what you are going to ask me, but I might.

Q. Will you take a look at those, Mr. Wood?

Mr. Wood: Are these the same things?

Mr. Lister: Yes, those are the ones we showed

(Testimony of E. M. Chandler.)

you down there when Mr. Chandler was down there, and they are substantially what Mr. Dorner testified about yesterday.

Mr. White: Why put them in twice?

Mr. Wood: Why are you going to put them in?

Mr. Lister: Well, are you willing to accept Mr. Dorner's testimony without any corroboration?

Mr. White: We don't have to stipulate to it, but it is in there.

Mr. Wood: No, I am not willing to accept his testimony that all this was necessitated because I think they could have used the bridge a long, long time without it. [142]

The Court: Well, let him put it in.

(Document, summary of cost of additional repairs, marked Libelant's No. 17 for identification.)

Q. (By Mr. Lister): You are looking at a paper which has been marked Libelant's No. 17. What does that represent, Mr. Chandler?

A. This is a summary of estimated cost of additional repairs which I have referred to as permanent repairs.

Q. Now, does that include the item that Otto Herman testified about yesterday?

A. Yes, he has the items in this estimate.

Q. What are the additional items there?

A. Well, one is electric repairs, \$500; another is railing the toll house, \$150; and another is repairs to steel, \$3,710.

(Testimony of E. M. Chandler.)

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(Testimony of E. M. Chandler.)

Mr. Wood: Repairs to steel?

The Witness: Yes, steel work, repairs to the bridge, the steel work on the bridge.

Q. (By Mr. Lister): Now, those items which you have mentioned in addition to what Mr. Hermann testified to make up the total; do they not?

A. Yes, they make up the total of \$23,710.

Q. Will you state whether or not those costs are necessary to put the bridge back in the condition it was prior to this accident? A. Yes.

Q. As a matter of fact, you have done one item of that already, [143] have you not?

A. Well, one small item, the railing of the toll house.

Q. How much did you estimate that?

A. It's estimated here \$150.

Q. What did it cost you? A. \$154.

Q. How about the electrical repairs, have they been made yet?

A. No, they have not been made.

Q. Is there any way that this repair that you now said was necessary can be done without doing the work that Mr. Herman has estimated will have to be done in the way of lifting up the bridge?

A. Well, there is another way of doing it, but it costs a lot more money.

Q. How would you do it other than by lifting—how could you do it?

A. Well, the other way, which isn't practical at all on account of the cost—

Mr. Wood: Well, we object to it, and if it will

(Testimony of E. M. Chandler.)

save time, if it's a more expensive way, we don't care about it.

Mr. Lister: All right.

Q. (By Mr. Lister): Now, Mr. Chandler, why do you have to put in this extra work? The bridge is being used now, isn't it? A. Yes.

Q. Why isn't it all right the way it is? [144]

A. Well, it's quite a long story to explain. If you want me to do it I will. This lift span was originally a simple span that was part of the original bridge finished in 1924. It had a wooden roadway and timber stringers, and when the War Department wanted it converted into a lift span, why, we put in steel stringers and the steel floor, open grid floor, and reinforced the span so that it could take the additional strain of being a movable span instead of a fixed span, and in other words, spanned the jar, and in doing that we straightened it so that it would carry the normal State Highway loading, what they referred to as H-15 loads.

Q. What is that?

A. It is merely what is known as H-15 loading. It is standard highway bridge loading, and the rest of the bridge was designed for what would correspond to H-12 and a half loading. In other words, it was lighter. This was the best part of the bridge as a result of those repairs and alterations. Now at the present time out of the 20 spans on the bridge, this is by far the poorest one because it has been weakened by these emergency

(Testimony of E. M. Chandler.)

repairs, and I can tell that, and I have observed it many times the way heavy traffic acts on the bridge with respect to vibration, and you can feel a certain amount of deflation or slight drop in the center of the span as a very heavy load comes on. What I am trying to make clear is that before this collision that span was very stiff and would carry anything allowed on the highways. [145] Now it does not.

Q. How long was it, Mr. Chandler, from the time this accident happened until the bridge was put back into unrestricted use?

A. Well, I think the date was the 20th of July.

Q. In the meantime, what restrictions were there on the use of the bridge?

A. All loaded trucks were prohibited, and we had signs in the roadway at each end of the bridge or near each end of the bridge to that effect.

Q. Have you advised yourself as to the amount of loss of revenue you had during the time this bridge was under the restricted use?

A. Yes, I made a very careful analysis of the whole situation and compared it with traffic the year before and traffic before the accident and traffic after the accident.

Q. What did you determine was your loss of use there?

A. Well, I made a report that, in my opinion, a hundred dollars a day was a very fair statement. If it was anything, it was an understatement of the loss.

(Testimony of E. M. Chandler.)

Q. Now, as I recall, the bridge was actually in restricted use for some thirty-five or six days, wasn't it?

A. Thirty-seven days was what I had in mind.

Q. And you in figuring your loss of use, did you include the full 37 days?

A. No, we deducted Sundays and we had one holiday, 4th of July, in which trucks are not much of a factor. [146]

Q. Did you deduct those days in figuring?

A. Yes. In other words, I figured the loss on the basis of 31 days.

Q. In doing that you left out the Sundays and holidays; is that true? A. That's right.

Q. I think you may cross-examine. Well, may I ask, I think I can ask this question. Was that period of time, that 37-day interval, was that necessary and proper in order to get the temporary repairs made and the bridge back in use without restrictions?

A. Yes, in fact, we were very fortunate to get it done that quickly and as successfully as we did.

Mr. Lister: You may cross-examine.

Cross-Examination

By Mr. Wood:

Q. Mr. Chandler, if the pertinent repairs are so necessary to put the bridge back in its original condition, why have you delayed all this time doing that?

A. Well, I have had a lot of experience in dealing with the Columbia River at this particular site,

(Testimony of E. M. Chandler.)

and the nearest practical time to start doing that work would be immediately following the next high water, and we cannot do it at all until we get a permit from the War Department.

Q. Have you applied for that permit? [147]

A. No, I have inquired of them as to just what would be necessary to supply, and, it is necessary to specify the exact time we expect to have the river closed in the application, and the time that would be the best time to do it would be immediately following high water this year.

Q. Well, you had low water last year after this accident. Why didn't you do it then?

A. Well, we didn't have time. It was the latter part of July before we had these emergency repairs done.

Q. Well, but the low water comes along in September, doesn't it?

A. No, it starts in August, but, you see, this falsework that was built out there won't stand up to ice, and it won't stand up to flood, either one.

Q. Well, you have no definite——

A. We have had our hands full with this. We cannot do everything at once.

Q. You have no definite plans yet for making the repairs, have you?

A. Yes, we have definite plans for a definite estimate made at that time.

Q. I mean, you have no definite plans in your mind as to when or how you will make them, have you?

(Testimony of E. M. Chandler.)

A. The matter is out of my hands pretty much. It was sold in December.

Q. Who is going to make the repairs then? [148]

A. I assume the new owner.

Q. Suppose you succeed in this case, getting the amount you are asking for, \$30,000 or so, what are you going to do with it?

A. That's a matter of adjustment between ourselves and the new owners. They bought the bridge for \$50,000 cheaper than they otherwise would have because of this collision.

The Court: I don't think that would make any difference, Mr. Wood. He is entitled to put it in the condition it was immediately prior to the accident.

Mr. Wood: Very well, I will pass over that.

Q. (By Mr. Wood): Now, you have described somewhat on Mr. Lister's questioning the red light that was on the center of the span. What significance do you attach to that? What has that got to do with this case, in your opinion?

A. Well, I think it has a lot to do with it.

Q. That's what I want to know.

A. The fact of the case is that we have a red light there when the lift span is in operation. Of course, at night we have it there also as—it's put on manually.

Q. Put on manually?

A. When you start the lift span the light goes

(Testimony of E. M. Chandler.)

on automatically. It turns green automatically when it gets to the top.

Q. It turns green when it gets to the top. Suppose it does not get to the top?

A. That's just it. It's still always a red light if it stops [149] before you get to the top, but we have taken care of that. That is, it has become the custom by giving these signals, two blows of the whistle.

Q. All right, Mr. Adams says that he seldom lifted the span clear to the top. That's correct, isn't it?

A. That's right.

Q. And it was only when you lift the span clear to the top that the light would turn green?

A. That's right. This was built for seagoing vessels.

Q. Yes, so if it was lifted up 80 feet, or whatever it is, not clear to the top but sufficiently high for this tow to go easily under it, the light would be red, would it?

A. That's right.

Q. Still red?

A. Yes.

Q. Wouldn't change?

A. That's right.

Q. For that reason you now say it had become the practice for the bridge tender to blow two whistles for the boat to come in?

A. Yes.

Q. All right now, how do you know that? You were not at that bridge many times when boats were coming through, were you?

A. Yes, I have, I have spent lots of times at that bridge, and I have made particular point to be

(Testimony of E. M. Chandler.)

there when there was something going through to see its operation. [150]

Q. Mr. Adams never testified yesterday that he had any intention of blowing two whistles for the boat to come in, did he?

A. I don't know what he testified.

Q. You were here, weren't you?

A. Yes, I was here. He couldn't blow the whistle because the power was off.

Q. I know, but he never even intended to blow the whistle and didn't say so anyhow, did he?

A. Well, he is here. You better ask him, but I have watched the operation of the liftspan since this accident with a pile driver going through there, and not only was there two whistles blown but the operator of the pile driver put two men up on top of his tower, and he watched it closely to see if they had clearance enough. If anybody exercised that care there would never be any collisions.

Q. Now, Mr. Chandler, the War Department's Regulations govern the lifting and closing of this bridge and the signals and so on, don't they?

A. Yes, we are controlled by them.

Q. And the Regulations which are in evidence here do not say anything about that red light, do they?

A. No, I don't think they do.

Q. They don't say anything about blowing two whistles, do they?

A. No.

Q. And the subsequent Regulations that are now in effect and [151] were put into effect after this

(Testimony of E. M. Chandler.)

accident, still do not say anything about blowing two whistles to come in, do they?

A. Well, no.

Q. Well, do they? A. No, they do not.

Q. No, they don't, but what they do say——?

Mr. Lister: Just a minute, he has a right to explain the facts.

The Court: All right, they don't provide for the blowing of two whistles, but what do they do, Mr. Chandler?

The Witness: They provide now that nothing goes through the bridge unless it is flagged through with a green flag or green light, or at night with a lantern, and I am the one who made those suggestions to the War Department. The War Department asked me about my ideas. They asked me about a whistle. I told them that whistle was no good because when the power was off the whistle was no good.

Q. So the questions of the Regulations which were got up by you and the War Department in conjunction now provide for a green flag to be shown when it is safe for a boat to come on?

A. That's right.

Q. And a red flag when it is not safe to come on; is that it?

A. We don't show a red flag unless they start to come through anyhow, but they are not supposed to proceed through until they get a green flag in the day and a green light at night. In other [152]

(Testimony of E. M. Chandler.)

words, we are flagging them through now as a result of the accident.

Q. And a green light at night?

A. That's right.

Q. And if it is not safe to come through there is a red light shown? A. That's right.

Q. So the red lights are only for use at night, aren't they? And in the daytime they become flags; isn't that true? A. Well, now, yes.

Q. Now, at any time?

A. No, that was not the case before these new rules and regulations were in effect.

Q. Well, in the case of the older regulations there was no provision for anything, was there?

A. Well, I think I ought to, in justice, say that this red light was in the center of the span, at the time was put there as a requirement of the War Department and the U. S. Coast Guard at the time we designed the span, and all the other lights were put on there——

Q. There was not a thing in the regulations that said that if a signal fails that it should come through or not, was there?

A. I think you are right about that.

Q. And the only purpose of it was to show where the center of the span was to an oncoming ship at night? [153]

A. No, that was not the purpose of the red light. I should explain that right after this liftspan was completed in 1940, the War Department received a number of complaints about not having a green

(Testimony of E. M. Chandler.)

light in the center of the span because practically all the navigation does not require a liftspan. They go underneath, and the War Department declined to change it. In other words, they use a green light only when a liftspan is clear up.

Mr. Wood: That's all.

Cross-Examination

By Mr. White:

Q. Mr. Chandler, I am very interested in this whistle you mentioned. You said it had an air compressor on it. It was a compressed air whistle?

A. Yes.

Q. What was the tank, what size tank, how much compressed air did that tank hold?

A. I believe the contents of it were, I remember how the whistle sounded. It was very light.

Q. And the tank holds compressed air, doesn't it?

A. I assume so. It's a compressor.

Q. For use on the whistle?

A. Yes.

Q. And the only electricity involved is compressing the air into the tank so that when you pull the cord on the whistle [154] air goes out and blows the whistle; isn't that right?

A. I assume so.

Q. Did you ever issue any instructions to your men to keep that tank full of air?

A. Well, no, that is handled automatically.

Q. Automatically?

A. Yes.

Q. Well, this man testified that when the power went off he pulled the whistle and nothing happened. Where was the air?

(Testimony of E. M. Chandler.)

A. Well, I judge that the air is compressed immediately when it is actuated through the switch. The motor runs, compresses the air, and then the whistle blows. It is done instantly. I am not too familiar with the mechanics of that whistle, if that's what you want to know.

Q. No, but it's compressed air, wasn't it?

A. That's right.

Q. You are familiar with that bridge, and you have a general familiarity with the whistle, don't you?

A. Well, except to the sound of it.

The Court: The witness has testified that he does not know whether it went on automatically or not.

Mr. Wood: What I am getting at——

The Court: I don't think he is a person who can answer the question.

Mr. White: It may be so, your Honor. Let me ask you this, [155] Mr. Chandler. Did you ever issue any instructions to your bridge tender to keep compressed air in the whistle tank?

A. No.

Q. Before this accident did you ever give any contemplation or thought as to what would happen if the power went out such as when this accident occurred? Did you ever reflect in your mind what should be done in such an emergency before this accident?

A. Well, no, I never contemplated this kind of an accident. If I did, the bridge would have been designed like a battleship to take that kind of a thrust, and it wasn't.

(Testimony of E. M. Chandler.)

Q. Your have had fuses blow out on your bridge occasionally?

A. Yes, that's the reason why we had an electrician there so that he could fix it immediately if this happened.

Q. And if those fuses blew out on the bridge have you ever given any thought that maybe fuses might blow out on other parts of the circuit not connected with the bridge before this accident?

A. Well, it's very unusual though to expect the main source of supply to fail although it does fail on occasions just like lights go out here in a thunderstorm.

Mr. White: May I tend it to the Court or show it to the witness?

The Court: You can do either one you want to. Let Mr. White present it to Mr. Chandler.

Q. (By Mr. White): I am very interested in Exhibit 14, I believe, the blueprint of the elevation. Is that the present location of [156] the control tower as you have indicated? I believe you said that. I just wanted to make sure.

A. It is marked "Operator's house."

Q. The control tower?

A. Yes, approximately, it's on the level, yes.

Q. That is the location? A. Yes.

Q. Now the catwalk around it is on the north side, on the east or up-river side, and on the west side, right? A. Yes.

Q. There is a catwalk around it? A. Yes.

Q. And on the west side you have transformers?

(Testimony of E. M. Chandler.)

A. Yes.

Q. Now those transformers are just opposite the control house proper and below the windows; isn't that correct?

A. Yes.

Q. So a person could go on the catwalk, that is, on the north side or the back side of the house to the down-river end, couldn't he, without being involved with those transformers?

A. Well, I could answer your question better if you didn't put on that last part. Mr. Adams and I after the collision, went around out there to see whether that could be done or not. Mr. Adams is a pretty large man, even larger than I. He had pretty much difficulty getting between that panel member because this [157] is too small an opening, but after he got out there there are 6,600 volt wires. You haven't a flag. You are holding a hat. We decided it was not a very practical thing to do.

Q. I see, but Mr. Adams didn't have a flag to wave at that time, did he?

A. No, not that I know of.

Q. Mr. Adams could have walked to the west end of the back walk, could he not?

A. Well, he could, but it—we had a sign there not to do it, 6,600 volts.

Q. At least there were no transformers there?

A. No, that's right, he had to crawl to get through.

Q. That's a two-foot walk, you testified?

A. Yes, but there is a steel panel member in the tower that obstructs passage.

(Testimony of E. M. Chandler.)

Q. You have had fuses blow out on your bridge occasionally?

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A. Well, he could, but it—we had a sign there not to do it, 6,600 volts.

Q. At least there were no transformers there?

A. No, that's right, he had to crawl to get through.

Q. That's a two-foot walk, you testified?

A. Yes, but there is a steel panel member in the tower that obstructs passage.

(Testimony of E. M. Chandler.)

Q. Did you get through?

A. I got through, and he crawled through.

Q. All right, at any rate, from that end, that is, speaking of the west end of the rear walk, there is an unobstructed view down the river according to this plan; am I right?

A. Yes, I think that's right.

Q. Coming now to the point where Mr. Adams testified he stood when he waved his hat, that is the up-river end on that east catwalk? In other words, the east, the southeast corner of the control house and possibly out a little, that is where that [158] renders an unobstructed view down the river, doesn't it?

A. No, it is partly obstructed view.

Q. Partly obstructed? A. Yes.

Q. By these members as indicated in this drawing?

A. This vertical member here and this panel member. I would like to explain this platform on the east side extends south and west down about here.

Q. And went about how far in feet?

A. Maybe four or five feet. I am just guessing.

Q. Well, that would put him right directly behind that vertical member that is 14 inches in width; is that right?

A. Well, yes, that would be—yes, that's right. I would like to explain that I went up there on that platform to see how much an obstruction there was, after the collision.

(Testimony of E. M. Chandler.)

Q. I haven't asked you a question.

A. Well, I am trying to tell the whole story.

Q. How wide is that—let me ask you this. When this span was lifted thirteen and a half feet the only way to get out to it would be to crawl a girder here; isn't that right? A. No.

Q. How would you get out there?

A. This girder goes up with the liftspan. Here is where the cable is attached.

Q. No, but to get to the control tower, how do you do that? [159]

A. Well, yes, the platform, he would have to climb on this horizontal steel member on the tower.

Q. Yes, to get out, and how wide is that horizontal steel member?

Mr. Lister: Is that an I-beam?

A. No, it is not an I-beam. It's probably a section, probably a foot or 14 inches wide in this case.

Q. Where would he leave the control platform to get onto that beam up on the east end, upward end? A. I assume that that is what he did.

Q. Then it's just a matter of stepping from that platform and then going along the top of that and crawling?

A. Yes, and after he got to that point his view down to the tug boat would be unobstructed.

Q. No, but I was thinking of the bridge, this platform. From the time you left the catwalk to walk across that span to get to the—to walk across this girder to get to the span how great a distance is that, about six feet?

(Testimony of E. M. Chandler.)

A. Something like that.

Q. And then from that point, if it was true that this liftspan was five or six feet down, if that was true, once you got out there you just jumped down onto the main deck of the span, couldn't you?

A. If it was only five or six feet you could, but it was about ten or twelve feet down. That would be quite a jump.

Q. Well, I mean it is a jump so you would land on the main deck [160] of that span, wouldn't you?

A. That's right.

Q. No more questions.

Redirect Examination

By Mr. Lister:

Q. Mr. Chandler, you started to say you did go up on this southerly end of this so-called catwalk and make observations to see what, if any, obstructions were between you and the down-river view. What did you find?

A. Well, I found that the obstruction wasn't very bad.

Q. Well, what do you mean?

Mr. Wood: He has testified to that, that there was one big beam and also a diagonal beam.

The Witness: That's right.

Mr. Wood: He has already testified to that.

Mr. Lister: That's all, thank you.

The Court: Have you another witness?

Mr. Lister: Yes, I have.

The Court: Is he here now?

Mr. Lister: Yes, sir.

The Court: We will take a five minute recess.

(Thereupon a short recess was taken.)

(Trial resumed.)

Mr. Lister: I would like to call Mr. Adams for just one question. [161]

OSCAR HERMAN ADAMS

recalled, and having been previously sworn, was examined and testified further as follows:

Direct Examination

By Mr. Lister:

Q. You have already been sworn, Mr. Adams, your name is O. H. Adams, isn't it?

A. Right.

Q. You are the gentleman who testified?

A. Yes, sir.

Q. What is the fact as to whether or not during the time you have been on the bridge any signals have been given to oncoming traffic before they came through that draw, before it goes through the draw?

A. Well, when I started to work on the bridge I worked under Tony Flynn. He was manager of the bridge at that time. He instructed me to always blow the whistle twice so to signal for a boat to come through.

Q. How long did you say you have been on the bridge?

(Testimony of Oscar Herman Adams.)

A. Oh, going on three years now. I think it will be three years in April.

Q. Has there ever been a time since you have been on the bridge when the traffic has gone through the draw that that signal has not been given?

A. No, sir.

Q. Did you contemplate giving that signal to this equipment on [162] the day of the accident?

A. Of course, when I got the bridge up at 30 feet we figured on doing it, yes.

Mr. Lister: That's all.

Mr. Wood: That's all.

(Witness excused.)

Mr. Lister: Call Mr. Morrison. [163]

GEORGE Y. MORRISON

called as a witness in behalf of the plaintiff, and having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Lister:

Q. Where do you live, Mr. Morrison?

A. I live in Hood River.

Q. How long have you lived there?

A. 28 years.

Q. Do you remember an occasion when the Hood River-White Salmon Bridge was struck by some equipment along in last June? A. Yes, sir.

(Testimony of George Y. Morrison.)

Q. When did you first notice the equipment that eventually struck the bridge?

A. I don't remember the date or the time of the day. I know where I was. I know what I saw, of course.

Q. Where were you?

A. I was at the top of the hill known as, coming down what is known as Serpentine Road which is, well, I am going to say opposite the bridge, but it is somewhat west.

Q. On the Oregon side? A. Yes.

Q. Did you at that time—what did you see moving on the river at that time?

A. I saw a barge, rather a tugboat pushing a barge with a long [164] boom sticking up about at that angle (indicating).

Q. Where was that equipment when you first noticed it?

A. It was just east of the mouth of the White Salmon River. I would not say how far.

Q. Where is that; is that downstream from the——?

A. That's downstream from the bridge, yes, sir.

Q. What did you do?

A. Well, I am always interested in any activity on the river. I used to have boats and things there, and I wanted to get a closer look at this. This looked like an interesting procedure and so I drove down and parked my car just east of what we know as the Consolidated Freightways Office, which is on the bank just above the railroad and much closer

(Testimony of George Y. Morrison.)

than I was at the top of the hill. I arrived, drove perhaps, two minutes at the most.

Q. With regard to the Oregon end of the bridge, where is this point?

A. Well, it is not, it was right angles, the point is—well, it is in town. If you know Hood River, it is before you cross the Hood River Bridge across Hood River. It is at a pretty good angle, and you have got a very good view of the river and the center span of the bridge from that point.

Q. Then did you continue to observe this equipment from that point?

A. I drove down for that purpose, yes, sir.

Q. Would you have any idea of the speed that equipment was [165] moving there in the river, Mr. Morrison?

Mr. Wood: I ask that he be qualified, if he knows, any familiarity with the speed of vessels first. Is he a navigator or been at sea?

The Witness: No, she was not going fast.

Mr. Wood: I object without a foundation laid.

The Witness: I would say it was a walk.

Mr. Wood: I move to have the answer stricken.

The Court: Qualify him more.

Q. (By Mr. Lister): Well, Mr. Morrison, you say you have lived in Hood River for 28 years?

A. Yes, sir.

Q. You say you have yourself operated boats on the river? A. Yes, sir.

Q. Have you watched that equipment move up and down the river quite often? Have you observed

(Testimony of George Y. Morrison.)

the speed of that equipment as it moves up and down the river? A. Yes, sir.

Q. Now with that background can you give us an idea of the speed of this tug and its tow on the bay on the day the accident happened?

Mr. Wood: I object to that for the same reason. I still think he is not qualified. He says he operated boats on the river. They may have been little launches, and he says he has observed ships going up and down the river, but that isn't any [166] particular reason for measuring their speed or other subjects as to the time it reached this point and the time it reached that point, and furthermore, the question does not say what time Mr. Lister is referring to.

The Court: Objection is sustained.

Q. (By Mr. Lister): Well, Mr. Morrison, you did observe this equipment, you say?

A. Yes, sir.

Q. From the time you first saw it until the time—did you see it until it actually came in contact with the bridge?

A. Well, there was a brief time there while I was driving from one point to the other where I naturally didn't see it.

Q. All right, you have described where you first saw it. Now when you again got to this point you have described where was this equipment at that time?

A. It was much closer to the bridge. It was

(Testimony of George Y. Morrison.)

probably 200 yards downstream, call it three hundred yards downstream from the bridge.

Q. Now do I understand that—were you conscious of the equipment in the river all the time from the time you first saw it until it——?

A. Well, I knew it was there, naturally, otherwise, I would not have driven down.

Q. What I am getting at, I thought you told me you watched it from the time you first saw it until the time it went into the [167] bridge?

A. Well, from the time I saw it when I was up there at the top of the hill until I got my parking near the Consolidated Freightways Office, naturally, there would be a time driving down hill and through traffic when I would not see it.

Q. How long did you say it took you to make the——?

A. Oh, two minutes at the most.

Q. With that exception of about two minutes, you saw it all the time; is that correct?

A. Yes, sir.

Q. All right now, did this equipment change its speed at all during the time you watched it?

Mr. Wood: I object to that. I don't think he could tell that.

The Court: It is going to be pretty difficult, but I am going to let him answer.

The Witness: In my opinion, it did.

Q. (By Mr. Lister): Did you see the actual impact between this equipment and the bridge?

A. Yes, sir.

Mr. Lister: You may cross-examine.

Mr. White: No questions.

Mr. Wood: No questions.

Mr. Lister: Thank you, Mr. Morrison.

That is our case, your Honor. [168]

The Court: You may proceed.

Mr. White: Your Honor, on behalf of the Crane Barge No. 25, at this time I move for a non-suit or a dismissal of the libel against the Crane Barge on the ground they have utterly failed to prove any negligence whatsoever in respect to the barge. There is no evidence. There is a picture in evidence that the barge was secured and there was a crane on top of it, and that is no evidence of any negligence whatsoever, and under *Sturgis versus Boyer*, which I am quite sure your Honor is familiar with, an unmanned tow, there is no evidence there was any man on it, the barge I am speaking of was without personnel. The control of command was under someone else, and there is absolutely no basis for any case whatsoever against the barge, and I ask at this time a non-suit.

The Court: Are you waiving your claims for damages against the bridge?

Mr. White: No, your Honor, I have a cross reply that I intend to pursue.

(Discussion off the record.)

The Court: I am going to take that under advisement.

Mr. White: Thank you, your Honor.

Mr. Wood: Should we call our witnesses?

The Court: Yes.

Mr. Wood: Call Mr. Stackhouse. [169]

EDWARD E. STACKHOUSE

called as a witness in behalf of the respondent Crane Barge No. 25, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. White:

Q. Mr. Stackhouse, where do you reside?

A. I reside in Portland.

Q. For whom are you employed?

A. Multnomah County.

Q. In what capacity?

A. Supervisor of Bridges and Ferries.

Q. How long have you been employed in that capacity? A. 18 years.

Q. What are your duties in connection with that job?

A. Well, to see that the bridges operate properly and are all kept in repair.

Q. You are familiar—there are four bridges under your jurisdiction in the County of Multnomah?

A. Four large bridges on the river here, yes, sir.

Q. They are on the river? A. Yes, sir.

Q. What arrangements do those bridges have for whistles in the event of a power failure?

A. I would like to qualify that last answer, sir. There is [170] more than four bridges, but I take

(Testimony of Edward E. Stackhouse.)

that for granted that you are asking about the ones that have lifts in them?

Q. Yes.

A. Because we have St. John's, Sellwood and Ross Island, we have a bunch of them, but those are the ones with the draw; is that it?

Q. Yes, as this draw. A. That is correct.

Q. What is the arrangement for whistles on those bridges?

A. They have an air whistle on those bridges, and with those whistles are controlled by air pressure.

Q. What are the tank sizes?

A. On three of those bridges we have 125-pound pressure tanks, air tanks, and on the Broadway we have 150-pound pressure.

Q. What means of putting air into the tanks is it, electricity?

A. No, we have the air pressure.

Q. Air pressure run by electricity?

A. Yes, that's right.

Q. If there is pressure on the tanks, the whistle can blow in spite of the fact that there may not be any electricity on the bridge; isn't that right?

A. Oh, yes, stores this pressure up in the tanks. It is stored. Of course, it depends on how long you blow the whistle how long the air will stay in there, naturally.

Q. It is the customary type of whistle you have on the bridge? [171]

Mr. Lister: Your Honor, we object to that testi-

(Testimony of Edward E. Stackhouse.)

mony as being improper, not tending to prove any issue in this case, calling for a conclusion of this witness, not connected up with this particular controversy in any way.

The Court: Well, the objection will be overruled. You may answer the question.

Mr. White: Would you read that last question?

(Pending question read by the Reporter.)

Mr. White: I will reframe the question.

Q. (By Mr. White): Is it customary, is the whistle which you have described on the bridges in Multnomah County, is that the type of whistle, the customary type of whistle to have on bridges on the Columbia River?

A. I would say it is. That's what we have, never have anything else but that type of whistle.

Mr. White: That's all.

Cross-Examination

By Mr. Wood:

Q. You testified that those whistles you operate independently of a power failure on a bridge, didn't you?

A. That's right.

Q. For how long could you keep blowing those whistles in the event of a power failure?

A. I don't know as I can tell the exact hours that that would run, but it would last as long as this pressure was in the air [172] tank. It would be a considerable length of time.

Q. I just wanted to bring out the fact whether it's just a whistle and then would be exhausted, or

(Testimony of Edward E. Stackhouse.)

whether the pressure would last there for several hours.

A. No, it doesn't take very many pounds of air to blow the whistles when you have 125 pounds stored up, so it will last a considerable length of time. We could blow it a great many times.

Q. (By Mr. White): Would you say at least ten?

A. Oh, much more than that. They will last several days.

Mr. White: That's all I wanted to know.

Mr. Wood: That's all.

Cross-Examination

By Mr. Lister:

Q. Mr. Stackhouse, when do you use those so-called air whistles?

A. On the approachment of boats, when boats desire to go through.

Q. Do you always use them? A. Oh, yes.

Q. Do you signal a boat to go through a bridge?

A. That's right.

Q. And the boat does not come through until you signal them to do that?

A. That's right, they have to answer that signal to the boat.

Q. You give the boat a signal, and the boat has to answer before [173] it comes through?

A. The boat gives us a signal, and we answer that signal, and when we answer that signal, they have the all clear.

(Testimony of Edward E. Stackhouse.)

Q. And they do not come through until you have whistled?

Q. That's right, we give them that as an emergency whistle which means the draw will not rise and they are supposed to stop.

Q. Do you have any other whistle on the bridge?

A. No, but we have a spare or two in the shop, and if one goes out of order we can always change them.

Q. Just how many spares do you have?

A. About two.

Q. You have four bridges and two spare whistles? A. Yes.

Q. You have those because it is necessary to repair the ones that are on the bridges?

A. Once in a great while they get out of order. If they do, we take another one out, change, fix the other up ready to go.

Q. And if it gets out of order on an emergency basis you have to go to the shop and get your replacement; is that correct?

A. Yes, to get the whistle from the shop.

Q. If any emergency came up that for some reason or other your air had gone off, or did not work, do you have to go back and get your emergency whistle and install it and take the other one in for repair; is that the way you do it?

A. If the air had gone off there, wouldn't any whistle work so [174] there wouldn't be any use to go get it, but we see that that compressor works all the time.

(Testimony of Edward E. Stackhouse.)

Q. Well, they don't work all the time, do they?

A. Yes, they do.

Q. Well, I thought you said you had to take them in for repairs periodically?

A. We take another one out if it begins to get dim or low on the tone, so we figure it is not good. We take them in and clean them up.

Q. They are not foolproof, are they?

A. We have never had any trouble with any. I have been there for 18 years.

Q. You said you had a few spares?

A. That's right, we take them off once in a while, clean them up, see that they do work. They get dusty once in a while, and the sound isn't as clear as it should be.

Q. How many liftspans are there on the Columbia River?

A. There is four here in Portland.

Q. I am talking about the Columbia River.

A. I wouldn't know, sir. I only work in the county.

Q. I thought you answered a while ago it was customary to have this type of whistle on the Columbia River bridges?

A. I think it is, as far as I know.

Q. Do you know anything about Columbia River bridges?

A. Yes, some; I never worked on them. I don't know what kind of [175] equipment they have.

Q. You don't know whether the bridge at Longview has any similar equipment or not, do you?

(Testimony of Edward E. Stackhouse.)

A. I wouldn't know, no, sir; no, I wouldn't.

Q. You don't know whether the bridge between here and Vancouver has it, do you?

A. No, that belongs to the State Highway. I wouldn't know.

Q. You don't know what the bridge at, the White Salmon-Hood River bridge has, do you?

A. No.

Mr. Lister: Thank you, that's all.

Redirect Examination

By Mr. Wood:

Q. You told Mr. Lister just now that you didn't have a second alternative whistle on the bridges, but you do have another means of communicating from the bridges to a ship, do you not?

A. Yes, we have a speaking box or horn, you might call it, in case we have to speak up, to holler at them. If anything should happen, we have that there.

Q. Will that carry from the bridge to the ship?

A. Yes, it carries quite a ways on the river.

Q. Quite a ways. Have you had power failures on the bridges?

A. Oh, yes, we have those quite frequently.

Q. Quite frequently, that's all. These power boxes or these loud-speakers, they are not dependent on the electrical power [176] on the bridge, are they?

A. Oh, no, no.

The Court: Mr. Stackhouse, do you give signals

(Testimony of Edward E. Stackhouse.)

to oncoming traffic by reason of any regulation of the War Department?

The Witness: You mean the river traffic?

The Court: Yes.

The Witness: Yes, sir, that's under control by the Government.

The Court: In other words, when you signal a vessel to come through the bridge you do that because the regulations of the War Department require it?

The Witness: That's right, we run under War Department regulations on the river.

Recross-Examination

By Mr. Lister:

Q. Are those regulations peculiar to the bridges here in Portland, Mr. Stackhouse?

A. I wouldn't know, sir; I wouldn't know what the Government regulations, whether they are general all over the country or whether they just apply to certain zones of the river. I wouldn't know as to that.

Q. How do you know that there is a regulation at all?

A. Because we get this from the Government. The rules are laid down to us.

Q. Can you produce the regulations that requires these signals [177] on your bridges?

A. I believe the Roadmaster has them in the Court House.

Q. How long have those been in existence?

(Testimony of Edward E. Stackhouse.)

A. They have been there ever since I have been here. Whenever the Government lays down a rule we are supposed to follow it on a navigable stream.

Q. Well, that's just it. Are you now saying that there is a—have you ever seen these rules at all?

A. How is that?

Q. Have you seen these rules at all, yourself?

A. Yes, I have seen the communications from the Government, but I have not paid very much attention. They go to the Roadmaster, and I get my orders from him.

Mr. Lister: I would like to see those.

The Court: Well, you may get them during the noon hour. During the noon hour you can go to the Roadmaster's office. If you want to produce them you can produce the regulations. If you want to subpoena, I will give you a subpoena.

The Witness: The Roadmaster is George Buck.

Mr. Lister: Thank you, Mr. Stackhouse.

Mr. White: This witness may be excused, may he not?

The Court: Yes, Mr. Stackhouse, you may be excused now.

The Witness: Thank you, your Honor.

(Witness excused.)

Mr. Wood: Call Mr. Sadewasser. [178]

RICHARD SADEWASSER

called as a witness in behalf of the respondent Tug Lew Russell, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. Wood:

Q. Mr. Sadewasser, you live in Washougal?

A. That's right.

Q. You work for the Russell Towboat Company?

A. Yes, sir.

Q. You went to work for them, I believe, in 1946?

A. Yes.

Q. In what capacity have you been working for them?

A. Pilot.

Q. Pilot, and what position did you occupy on the Tug Lew Russell on the occasion of the collision with this bridge?

A. As pilot in the wheelhouse.

Q. When did you go on watch; do you remember?

A. 6:00 a.m.

Q. Where were you in the river then, about where?

A. At Bonneville.

Q. Were you still piloting the vessel up to the time, up to the collision?

A. Yes, sir.

Q. Where were you on the tug? In other words, I don't know [179] whether the tug has a pilothouse or whether you were out in the open.

A. I was in the pilothouse.

Q. What speed were you cruising at, coming up the river?

(Testimony of Richard Sadewasser.)

A. Approximately four miles an hour.

Q. Four miles an hour. Do you know that fairly definitely from the time you passed the different points, let us say, from Bonneville up to Hood River?

A. Yes, sir.

Q. That is when you were going your full speed?

A. That's right.

Q. Now as you approached the bridge, what did you do in regard to the progress of your boat forward?

A. When we were approximately within a quarter of a mile of the bridge I stopped both engines, let them shut down until the bridge came to a stop. It started raising, and he came to a stop. I assumed that it was high enough and started the engines and proceeded at an idling speed to the bridge.

Q. I didn't hear what you said. You said at idling speed?

A. That's right.

Q. What do you mean by idling speed? I have never heard that phrase.

A. Well, on this particular type of an engine they have an, oh, a limit to the amount of turns you can slow them down to.

Q. Yes? [180]

A. You see, our cruising speed is 750 turns, and you are not supposed to run them any lower than 400 turns.

Q. When you stopped the engines about a quarter of a mile below the bridge did your tug and tow lose headway?

A. Yes.

Q. And you waited then for the draw lift to lift?

(Testimony of Richard Sadewasser.)

A. That's right.

Q. Can you give us any estimate of the time you waited there until the lift began?

A. Oh, I would say it was approximately two minutes, two or three minutes.

Q. So, I take it for granted you lost considerable headway then? A. Considerable.

Q. Well then, when the draw lift lifted you say it came to a stop? A. That's right.

Q. What did you do then?

A. I started both engines and proceeded ahead.

Q. Why did you start the engines? In other words, why did you assume it was safe to go ahead?

A. Well, the bridge had come to a stop, and that is the only procedure I had ever seen with that particular bridge. There were no signals given or anything else.

Q. Did it appear to you to be high enough to go through? A. Right. [181]

Q. Did you have any doubt about it?

A. No doubt whatsoever.

Q. Having come to this stop and then resuming your speed idling your engines, as you say, about what speed were you making when you came up to the bridge itself?

A. Oh, I would say between a mile and a mile and a half an hour.

Q. We have been speaking of these speeds without explaining whether you mean over the ground or through the water. A. Yes.

(Testimony of Richard Sadewasser.)

Q. That leads me to ask how was the current in the river?

A. Well, it was traveling at the rate of about five miles an hour over land.

Q. Then you were bucking a current of about five miles an hour? A. That's right.

Q. So when you indicate the speed of a mile and a half an hour you mean over the ground?

A. Over the ground.

Q. Now when did you see for the first time that you might not clear the span?

A. The end of the boom was approximately ten or fifteen feet from the bridge itself.

Q. Now why couldn't you earlier than that see that you might not clear it?

A. Well, the boom, I believe it was 110 feet long, and it was [182] considerably ahead of the boat, and it was higher than the wheelhouse, and I was down on the water, close to the water, and so far ahead that it is very hard to judge the distance at that.

Q. That's what I mean. I wanted you to explain to the Court if you can your difficulties of a man at a distance from the bridge and low on the water telling whether the lift is high enough when it's a quarter of a mile away or at any time up to the time you get to the bridge.

A. I don't believe I understand what you mean, sir.

Q. How high were you above the water in your pilothouse? A. Well, about 25 feet.

(Testimony of Richard Sadewasser.)

Q. That was considerably lower than the span as you came to a stop, wasn't it? A. Yes, sir.

Q. That's what I want to know. Is it difficult for you in that position, for you to tell whether there is sufficient clearance, or do you have to rely on the bridge tender?

A. I have to rely on the bridge tender, that's right.

Q. Now there was testimony here just this morning that it was the practice for the bridge to blow two whistles as a signal for a boat to come on. Did you hear that testimony?

A. Yes, I heard that.

Q. What have you to say about that?

A. Well, that is the third time that I have gone through that [183] bridge where it had to raise, and in the three times I have never heard a whistle, I have never heard that whistle blow in my life.

Q. Did you see at any time prior to the collision this bridge tender on the bridge? A. No, sir.

Q. After the collision did you see him?

A. Yes.

Q. Where was he then?

A. He was out on a span, in the center of the span.

Q. How near did the tip of the boom come to clearing the bridge?

A. Three feet at the very most.

Q. That is, if the bridge had been three feet higher he would have gone clear?

A. That's right.

(Testimony of Richard Sadewasser.)

Q. Oh, yes, perhaps I should ask you, the makeup of the tug and tow has not yet been described to the Court, I think. You might do that.

A. The crane barge was on the starboard side of the boat ahead of the boat, and the boat itself was hooked on behind a loaded gravel barge. The boat and the barge were on the portside or the left side and the crane barge was on the right side.

Q. When you say the boat you mean the Tug Lew Russell? A. That's right.

Q. That was pushing a gravel barge ahead [184] of it? A. Yes, sir.

Q. Directly ahead of it?

A. Directly ahead of it.

Q. So that the nose of the tug was against the stern of the gravel barge? A. Yes, sir.

Q. Then forward on the tug's right, but abreast of the gravel barge, was this crane barge?

A. Yes, and the crane barge extended considerably ahead of the gravel barge.

Q. Do you know approximately the combined length of the tug and tow?

A. I would say approximately 265 feet.

Q. I forgot to ask, when you were right up to the bridge and you saw for the first time that it might not lift, what did you do with your engines?

A. I stopped them and shifted the cams, which the engines are direct reversible. You have to stop them, shift what they call the cam shift and start them up again, and they were running full astern.

(Testimony of Richard Sadewasser.)

Q. In other words, as soon as you saw there was danger you stopped and reversed your engine?

A. Yes, sir.

Q. How close did you say the tip of the boom was from the bridge then? [185]

A. Approximately ten or fifteen feet, fifteen feet at the most.

Q. Now at that spot and against that current in what lengths could you have brought your tow to a standstill?

A. I would say half of the length of the tow.

Q. Did you hit the bridge with any great, severe impact? A. No, sir.

Q. I think it has already been testified before, but what part of the boom hit the bridge? I don't mean that, I mean what part of the drawspan, the middle or right or left, did the boom hit?

A. The boom hit just to the north of the center of the span.

Q. Just to the north of the toll house?

A. That's right.

Mr. Wood: That's all.

Cross-Examination

By Mr. White:

Q. Mr. Sadewasser, how long does it take you to put your vessel in reverse going at the speed you were doing at the time you approached the bridge?

A. Oh, just a matter of two or three seconds is all.

Q. Not more than two or three seconds?

(Testimony of Richard Sadewasser.)

A. That's right.

Mr. White: No further questions. [186]

Cross-Examination

By Mr. Lister:

Q. I didn't understand how you spelled your name?

A. S-a-d-e-w-a-s-s-e-r.

Q. Were you the only person on board this tug and tow? Did you have a helper?

A. The skipper was aboard, and also two engineers.

Q. How many?

A. The captain and two engineers were aboard.

Q. Altogether there were four of you?

A. That's right.

Q. I see; where were the other gentlemen?

A. I don't know where any of them were.

Q. Were any of them forward of you?

A. No, sir.

Q. On the tug or tow? A. No, sir.

Q. Were any of them on the tow or either of the tows? A. No, sir.

Q. Well, you know they were not there, don't you?

A. I know they were not on the tows, yes, sir.

Q. And as I understood it, the gravel barge is directly in front, and the crane barge with this boom on it was to the starboard or right of the gravel barge? A. Yes, sir. [187]

Q. Did I understand you correctly that the aft

(Testimony of Richard Sadewasser.)

end of both tows were substantially on the same line?

A. Well, there may have been eight or ten feet difference in the two——

Q. And the crane barge itself, was it longer than the gravel barge or merely the boom that stuck out ahead?

A. Oh, the crane barge itself was considerably longer than the gravel barge.

Q. What was on it other than the boom?

A. On the——

Q. What were you carrying on this crane barge other than a boom?

A. A small boat, a landing craft.

Q. Where was the small boat located with regard to the boom?

A. That was directly beneath the boom.

Q. What is that?

A. Directly beneath the boom.

Q. Why couldn't you have turned that boom around and had it extending backward downstream where it would have been more nearly even with the tow? A. I don't know.

Q. Had the boom been in this same position which you have described to the Court all the way up the river? A. Yes, sir.

Q. Where did you start; where did you pick the tow up? A. Vancouver. [188]

Q. When did you pick it up?

A. I believe it was approximately nine-thirty the 12th of June, p.m.

(Testimony of Richard Sadewasser.)

Q. Would that have been in the morning?

A. In the evening.

Q. You picked it up at nine-thirty at night?

A. Yes.

Q. Then did you come directly up-river to the scene of this accident? A. Yes, sir.

Q. Did you make any stops on the way?

A. That I don't know.

Q. Were you on the tow all the time?

A. Yes, sir.

Q. I mean on the equipment? A. Yes, sir.

Mr. Wood: He was not on watch all the time.

The Witness: No.

Q. (By Mr. Lister): But when you were on watch did you have living quarters there on the tug?

A. Yes, sir.

Q. When were you first on watch?

A. We work six hours on and six off. I was working from six until twelve, that shift, I believe it was.

Q. And you had the charge when you first picked it up at [189] Vancouver at nine-thirty?

A. Yes, sir.

Q. And ran to midnight? A. Yes.

Q. Where were you then?

A. I was in the wheelhouse.

Q. What I mean was, where was your tug and its tow? At what point on the river had you reached at that time? A. At midnight?

Q. Yes, sir. A. That I don't remember.

Q. Then you were off duty until six o'clock the

(Testimony of Richard Sadewasser.)

next morning; is that correct? A. Yes, sir.

Q. When you came on duty where were you?

A. At Bonneville.

Q. How do you get through there at Bonneville?

Do you have to go through the locks?

A. Yes.

Q. Had you gone through the locks before you took over? A. No.

Q. How far is it from Bonneville by river to this Hood River-White Salmon Bridge?

A. Approximately 20 miles.

Q. Twenty miles? [190] A. Yes, sir.

Q. When did you clear the locks at Bonneville?

A. 6:45 a.m.

Q. 8:45? A. 6:45 a.m.

Q. When did you have your breakfast?

A. At six.

Q. Did you have your breakfast before you went on duty? A. Yes, sir.

Q. Then did you proceed steadily on up-river from Bonneville to the—how did you go through the bridge at, what they call the Bridge of the Gods there? Did they have to lift that bridge for you to go through?

A. There is no lift at all on the bridge. It is high enough to clear anything that goes through there.

Q. You went through there without any—

A. No difficulty at all, yes.

Q. Were you in charge of the equipment then?

A. Yes.

(Testimony of Richard Sadewasser.)

Q. And continued in charge until you got to the scene of the accident? A. Yes, sir.

Q. Did you make any stops of any kind?

A. No, sir.

Q. You said you slowed down or—you said you slowed your [191] engines down to 400 revolutions, didn't you, when you were some distance below the——

Mr. White: I object to that as assuming something not in evidence, contrary to the testimony. He said he stopped his engines.

Q. (By Mr. Lister): What did you say?

A. I said I stopped the engines approximately a quarter of a mile from the bridge.

Q. What did you say about 400 revolutions?

A. When I re-started the engines, when the bridge had started to lift and stop I re-started the engines and ran them about 400 revolutions.

Q. Then your testimony is that you came up to this span a quarter of a mile downriver from the bridge, you were going at substantially 750 revolutions, and then you shut your engines off entirely?

A. That's right.

Q. Did I understand you to say you have two engines on this equipment? A. Yes, sir.

Q. Were both engines operating as your tug came up river? A. Yes, sir.

Q. You shut them both off, did you?

A. Yes.

Q. When you resumed you started both engines up, didn't you? [192] A. Yes.

(Testimony of Richard Sadewasser.)

Q. You said you were making four miles an hour at 750 revolutions, didn't you?

A. Yes, sir.

Q. Then when you resumed at 400 revolutions would you be making relatively the same speed? I mean, would your speed be at four miles per hour what 400 is to 750?

A. No, sir.

Q. Why wouldn't it?

A. I don't know.

Q. Well, are you sure that it wouldn't be?

A. Yes, I am positive.

Q. Why are you then? What is your basis of your positive position?

A. I stopped the engines a quarter of a mile from the bridge. The tow drifted or coasted. When you re-start them if I would have run along up to 750 turns it would take approximately 15 minutes to get up to that four miles an hour again, but being as I ran them only 400 turns a piece you can run them all day and you wouldn't get up to that speed.

Q. I appreciate that. How do you fix this distance at one quarter of a mile?

A. Just by judging.

Q. That's just a guess, isn't it?

A. That's right, it was—— [193]

Q. You said it was hard for you to tell where the end of this equipment was. It would be pretty hard to tell where the bridge was, wouldn't it?

A. No, sir.

Mr. White: I don't believe he testified to that. I object.

(Testimony of Richard Sadewasser.)

Q. (By Mr. Lister): Didn't you say in answer to a question on direct examination it was difficult for you to see as you, in the position you were as to the relationship between the end of the boom and the bridge, or words to that effect?

A. Yes, sir.

The Court: He testified to that.

Q. (By Mr. Lister): What is that, please?

A. Yes, sir.

Q. Well, wasn't it hard for you to tell the distance between the equipment and the bridge, too?

A. No, do you—may I ask you a question?

Q. Will you answer mine?

A. Do you mean the whole tow or the boom?

Q. Well, I am asking either, anyway you want to put it?

A. No, it wouldn't be hard at all.

Q. Now when you first turned your engines off had this liftspan started to move?

A. No, sir, it didn't start until after the engines were shut down completely.

Q. You said you had your engines idling or shut off, didn't you? [194]

A. Completely off.

Q. For two or three minutes; is that correct?

A. Yes, sir.

Q. In that two or three minutes what happened in regard to the bridge?

A. Well, after they were shut down for a little while the bridge started to raise, and then the bridge came to a stop and then I started the engines again

(Testimony of Richard Sadewasser.)

Q. As the bridge raised did you see any lights on it?

A. Not from a quarter of a mile, no, sir.

Q. I am asking you, though, did you see any lights on the bridge at all? A. No, sir.

Q. At any time? A. No, sir.

Q. You said you had been through the bridge on two other occasions, or was this, or three other occasions? A. Two other occasions.

Q. When you went through the bridge on those two other occasions did you see any red light in the center of this liftspan?

A. If I remember correctly, they were both in the daytime, and I didn't see them, no.

Q. Well, what are you saying, that you don't remember whether you went through in the daytime or not?

A. That's right, it was over a period of several years. [195]

Q. Well, you would surely know whether it was daytime or night, wouldn't you?

A. I can't remember for two or three years back.

Q. Well, Mr. Sadewasser, do you actually remember having gone through there at all?

A. Yes, sir.

Q. Well, if you had, don't you remember when you did? A. No, sir.

Q. Do you remember what kind of equipment you had? A. Yes, sir.

Q. Who you were working for?

A. Yes, sir, I know who I was working for.

(Testimony of Richard Sadewasser.)

Q. Well, don't you know whether you went through in the daytime or night?

A. On one occasion I went through in the daytime.

Q. Are you sure of that? A. Yes, sir.

Q. Now, when was that?

A. I don't remember.

Q. Well, with regard to this accident, was it before or after?

A. Oh, it was before, considerably.

Q. How long before?

A. I would say two years.

Q. Three years? A. Two. [196]

Q. How long have you been working on the river?

A. I worked on the river for a little less than nine years.

Q. How long have you worked for Russell Towboat and Moorage Company?

A. Approximately five years.

Q. Well, are you sure now if there had been a red light in the center of this span on the day of this accident, were you in a position to see it?

A. Yes, sir.

Q. And are you willing to say there wasn't any there or you didn't see it?

A. I will say I didn't see it.

Mr. White: Are you referring, Mr. Lister, to the light being on or just seeing the light.

Mr. Wood: He has already answered.

(Testimony of Richard Sadewasser.)

The Court: The witness has answered the question.

Q. (By Mr. Lister): What is the technique in stopping and reversing these engines, Mr. Sadewasser?

A. You shut them completely off, and you just have four levers right in front of you. You pull two of them back, and your engines stop. You pull the other two back, they are in reverse. You start them up again, and they are in reverse.

Q. You don't really stop the engines?

A. Yes, the engine stops completely.

Q. How does it start after it stops? [197]

A. By air.

Q. If you stop them now—I mean an appreciable period of time elapses, will they still start up without any cranking or without—how do you start them up in the morning, in other words?

A. Well, if they are cold you have to use heat.

Q. But if the engine is moving along, if the boat is moving along, you can stop the engine, and if you didn't push the other levers ahead it would be absolutely dead; is that correct?

A. That is correct. Then you move the other levers and it immediately starts up.

Q. And it is warm; is that correct?

A. You have two levers which are your starters and throttles, and you have two levers to shift your engines.

Q. I am not sure I still understand, but, at any rate, on this particular occasion you merely pushed

(Testimony of Richard Sadewasser.)

two levers forward and pulled two levers back and that, and in that interval your power which had been driving your boat ahead was reversed and was pushing your boat backwards; is that correct?

A. No, sir, your cam levers on your outside of your throttle such as this, when you are going they are straight up, your engines are running, they are straight up, and the throttles are naturally further ahead. When you stop you pull your throttles back, your engine stops. Then you pull these two cams, levers back, and they are in reverse. Then you just shift your throttles [198] ahead again, she starts up, and they are in reverse.

Q. And that is what you did, as you described, when you saw this boom was not going to quite clear the bridge? A. Yes, sir.

Q. How high was the end of this boom above the level of the water? A. I don't know.

Q. Well, you were there, weren't you?

A. Yes, sir.

Q. You picked it up at Vancouver?

A. Yes, sir.

Q. You knew you were going to go under this bridge, didn't you? A. Yes, sir.

Q. Well, don't you have some idea of the height of the end of the boom above the level of the water?

A. No, sir.

Q. Do you know what the height of the water was on the day of this accident?

A. No, I don't know what the gage was. I know it was very high.

Q. What is that?

(Testimony of Richard Sadewasser.)

A. I know it was high.

Q. Well, you said that you were about 25 feet above the water, didn't you? A. Yes, sir.

Q. How far was the end of the boom above the level of your eyes? [199] A. I don't know.

Q. How high was the end of the boom?

A. I don't know.

Q. You say there were three other men on the tug, on the tug someplace? A. That's right.

Q. Would it have been possible for one of those men to be out at a better point of advantage to see the relationship between this boom and the bridge as you came up to the bridge A. No, sir.

Q. You said that the gravel barge was in front of the tug, didn't you? A. Yes, sir.

Q. And the other barge extended even further than that; is that right? A. Yes, sir.

Q. Nobody was on either the gravel barge or the crane barge? A. No, sir.

Q. What, if anything, was on the end of this boom? A. Would you repeat that?

Q. What, if anything, was on the upper end of this boom?

A. Well, there was a large sheave in the end of the boom itself.

Q. Did it hang down vertically?

A. No, sir, it was——

Q. Was it lashed to the boom? [200]

A. It is on the boom itself. It is where your line comes from the winches over the end of the boom. There is a block hanging down at the end of the line, yes.

(Testimony of Richard Sadewasser.)

Q. Well, how low did it extend below the end of the boom?

A. Well, it was down to the deck of the barge.

Q. Well, I thought—wasn't there a block there at the very upper end of the boom?

A. No, sir, the block at the far end of the boom was hooked to the deck of the barge itself, and farther back from the far end there is another block which was hanging about half-way from the deck of the barge and the boom.

Q. Then it is your testimony that the upper end of the boom was free of any block or any equipment of any kind?

A. Just a large sheave in the end of the block, yes, sir.

Q. What do you mean by that?

A. It's a large wheel.

Q. Reel? A. Wheel.

Q. Wheel?

A. Yes, that your line runs over.

Q. And was it right at the end of the, the center of this wheel was right in the center of the boom?

A. Molded right into the center of the end of the boom, yes, sir.

Q. Was that knocked off in this accident?

A. No, sir. [201]

Q. They said something about a big block or pulley being dropped off on the bridge.

A. That was the one that was hanging down from about half-way to the deck of the barge.

Q. When this boom contacted the bridge you

(Testimony of Richard Sadewasser.)

said that there was about, about what point was the contact made; how near to the upper end of the boom? A. It was on the end of the boom.

Q. The extreme upper end of the boom?

A. Yes, sir, the wheel went through the guard-railing, rolled through the guard-rail, the sheave on the end of the boom.

Q. And above the deck of the——

A. Bridge.

Q. The liftspan? A. Yes, sir.

Q. Then it went clear through to the other side of the bridge, didn't it? A. Yes, sir.

Q. When you say the impact was not severe it did carry it through, this angle of your boom rode up onto the deck of the bridge, didn't it?

A. Yes, sir.

Q. Were you actually watching the end of this boom as you came up to the bridge to see whether it was going to clear or not?

A. I was watching the end of the boom to see the two piers of [202] the bridge.

Q. How wide was your tug and tow?

A. About 80 feet.

Q. Eighty feet over-all width?

A. Yes, sir.

Q. You had quite a lot of clearance on each side then, didn't you? A. Yes, sir.

Q. And as you came up to the bridge there did you change your course as to going north or south from what you had been moving as you came up to this place where you said you stopped your engines?

(Testimony of Richard Sadewasser.)

A. No, sir.

Q. In other words, you were, you were trying to operate right in the thread of the stream, weren't you? A. Yes, sir.

Q. You were aiming for about the middle of this drawspan, weren't you? A. Yes, sir.

Q. You came straight out there as best you could from the time that you—at least from this quarter of a mile back? A. Yes, sir.

Q. Could you give us the minimum speed you reached when you had your engines shut off there?

A. I would say one-half mile. [203]

Q. Then you decreased from four to one-half, and then built up to a mile and a half, approximately? A. Yes, sir.

Mr. Lister: I believe that's all.

Redirect Examination

By Mr. Wood:

Q. I think it is fairly obvious from his testimony, but I would like to ask him, your view was unobstructed? You could see the bridge, the top of the boom and everything ahead of you, couldn't you? A. Yes, sir.

Q. You said you had been through there two or three times before this and you had never heard any whistle from the bridge signaling you to come on. I just wanted the Court to understand that you have been through that bridge though many, many more times than that, haven't you?

A. Oh, yes, sir.

(Testimony of Richard Sadewasser.)

Q. Well, explain that.

The Court: Oh, I know he goes through there constantly without the draw being lifted.

The Witness: Yes.

Mr. Wood: That's right, that's all.

(Witness excused.)

Mr. Wood: I will call Mr. Benson just for a short question. He is one of their witnesses. [204]

The Court: Mr. Benson, will you resume the witness stand?

HAROLD BENSON

recalled, testified as follows:

Examination

By Mr. Wood:

Q. Mr. Benson, was this whistle on the bridge, the one that failed to operate because of power failure, has that got any air compressor tank attached to it, or does it work directly from an electrical push button?

A. It works directly from electrical push button.

Q. There is no air compressor there, is there?

A. Not that I know of.

Q. Nor no air tank with compressed air?

A. No storage tank that I know of.

Mr. Wood: That's all.

Examination

By Mr. Lister:

Q. While you are on the witness stand could I

(Testimony of Harold Benson.)

ask some questions. Did you make electrical repairs to this light out in the middle of the bridge?

Mr. Wood: Wait a minute, just a moment, is this cross-examination?

Mr. Lister: No, it isn't.

The Court: Well, bring it in on your case in rebuttal.

Mr. Lister: All right, your Honor.

The Court: If you want to ask him anything about the whistle it is all right.

Q. (By Mr. Lister): Is that the same whistle that has been on [205] there? How long has that whistle been on there?

A. Ever since the bridge was built, as far as I know of, or at least it has been on there ever since I started doing any work on the bridge.

Q. Well, it wouldn't be there until—did you work on the bridge before the liftspan was put on there? A. No, I did not.

Q. Is this the same whistle that has been on there ever since the liftspan was put in, so far as you know? A. As far as I know, it is.

Mr. Lister: I think that's all.

The Court: We will now recess until two o'clock.

(Thereupon, at 12:00 o'clock noon, the trial was recessed until 2:00 p.m., same day.) [206]

Afternoon Session

(2:00 o'clock p.m., trial resumed.)

The Court: Call your next witness.

Mr. Wood: Call Captain Russell.

JAMES M. RUSSELL

called as a witness in behalf of the respondent, Tug Lew Russell, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. Wood:

Q. Mr. Russell, where do you live?

A. I live in Portland, sir, on Northeast Marine Drive.

Q. You are one of the Russell family that owns and operates the Russell Towboat and Moorage Company, are you? A. Yes, sir.

Q. How long have you been working on the waterfront and on the river?

A. Approximately 15 years, sir.

Q. Do you hold a pilot's license?

A. Yes, sir, I am a First Class Pilot.

Q. Is that for both steam and diesel?

A. Yes, for 500 gross ton.

Q. Who was Captain of the Tug Lew Russell on the occasion of this collision with the Hood River-White Salmon Bridge?

A. I was, sir. [207]

Q. Were you on watch at the time?

A. No, sir.

(Testimony of James M. Russell.)

Q. When were you about to come on watch?

A. I was due on watch at twelve o'clock.

Q. Preparatory to coming on watch were you called by anybody to come on?

A. Yes, sir, about eleven, about——

Q. About how long before noon were you called?

A. About 11:40, sir.

Q. What did you do then?

A. I put on my clothes, came out on deck, sir.

Q. Were you anywhere near the pilothouse?

A. Yes, sir, I was standing directly below it.

Q. Where was your boat with reference to the bridge at that time? A. I beg your pardon?

Q. Where was the Tug Lew Russell with reference to the bridge when you came out on deck?

A. It was approaching the bridge, sir.

Q. It was approaching the bridge?

A. Yes, sir.

Q. Had it already come to a stop and then resumed its forward motion?

A. What do you mean? I don't follow you, sir.

Q. Well, Mr. Sadewasser testified that a quarter of a mile below [208] the bridge he came to a stop, then the bridge lifted, and then he resumed his forward motion.

Mr. Lister: I don't think that was his testimony, Mr. Wood.

The Court: It would not make any difference. It is a leading question to this witness.

Mr. Wood: I am only trying to identify.

The Court: Yes, go ahead.

(Testimony of James M. Russell.)

Q. (By Mr. Wood): When you came on deck the first time had your tug stopped its engines below the bridge and then resumed its motion, or had it not?

A. Yes, sir, what woke me up just prior to the man calling me was the fact that the engines had stopped.

Q. That's what I wanted to find out. So when you came on deck your flotilla had already resumed its motion forward, had it? A. Yes, sir.

Q. Any idea how far you were below the bridge when you first saw it? A. Not exactly, sir.

Q. Did you see the draw lifted?

A. Yes, sir, I saw that it was open.

Q. It was already open? A. Yes, sir.

Q. Was it still raising, or had it risen and come to a stop?

A. It was standing still, but it was open.

Q. Was there ever any doubt in your mind but what you would [209] clear it?

A. No, sir, not at any time.

Q. Will you say something to the Court explaining how easy or how difficult it is for a man low on the water to judge exactly the height of a span ahead of him?

A. Yes, sir, it is very difficult for any person in a powerhouse with a clear vision with a tow which is in front of a person sticking out in front of you 200 feet to tell exactly how high that boom is or whether it is going to clear her or not. That is left up to the bridge tender to take care of.

(Testimony of James M. Russell.)

Q. Why is it difficult for you to tell?

A. Because you are so far away that you cannot tell whether you are high enough or low enough to go under the bridge.

Q. So that a person being low on the water with reference to the span being a danger, does that have something to do with it or not?

A. Yes, it does. If you are at the same level with the bridge you could see it, but since you are so far below you cannot tell.

Q. At any time prior to the crash did you see the bridge tender?

A. No, sir, I never did see him until he came out on the span after the crash.

Q. Did you ever receive any signals from the bridge one way or the other?

A. I never saw him so I can't say, sir.

Q. I mean were any whistles blown from the bridge? [210]

A. No, sir, at no time.

Q. Have you been up those waters and under or through the bridge many times?

A. Many times, sir. I had to have at least 50 trips before I could get my license, and I had to have that in a two-year period.

Q. Have you been through there with a tow that necessitated raising the draw?

A. Yes, sir, twice.

Q. Only twice?

A. Yes, sir.

Q. On either of those occasions was any whistle blown from the bridge, any blasts or anything else?

(Testimony of James M. Russell.)

A. No, sir.

Q. Inviting you to come on?

A. No, sir, at no time.

Mr. Wood: That's all.

Cross-Examination

By Mr. White:

Q. If I may ask a question, Captain. Just before the vessel or tug and barge hit the bridge or before the boom hit the bridge, in other words, when your vessel and tug was imminently upon the bridge, where were you standing?

A. I was standing on the portside which is the left side just directly below the pilothouse, which is approximately eight or [211] nine feet below the pilothouse.

Q. What deck do you call that?

A. That's the "Texas" deck.

Q. That's the one deck above the main deck?

A. Yes, sir.

Q. And then the pilothouse is just directly above the "Texas" deck? A. Yes, sir.

Q. Were you looking at any particular part of the bridge or facing any part?

A. Yes, sir, I was looking at the port side of the bridge, from the port. I was looking at the north shore side or Washington side of the bridge on which the pier rises along the side I could see from that angle.

Q. Were you in a position to have seen any kind of a signal if one was given?

(Testimony of James M. Russell.)

A. Yes, sir, I was.

Q. You didn't see any?

A. I was in a position to see only a signal from that side of the bridge. I could not see the crane from where I was standing.

Q. When the engines stop or the engines are shifted in the pilothouse is there any noise or any indication you could hear from where you were standing?

A. Yes, sir, you hear a terrific blast of air, and also you hear the exhaust suddenly quit. [212]

Q. Now, just before the crash did you hear anything like that?

A. Yes, sir, I did. That made me suspicious the minute I heard the engines stop and start in reverse again, start up in reverse.

Q. That was just an instant before the crash?

A. Yes, sir, I realized he was reversing his engines at that time.

Q. I believe that's all. Oh, by the way, Captain, you have been on the river for about how many years?

A. For approximately 15 years.

Q. Fifteen years, and have you in the course of your duties had occasion to estimate speed of tugs and barges of various sizes and descriptions?

A. Yes, sir, I have.

Q. From the time when you first stepped out on the deck, which I understand was as your tug was making the approach, did you have occasion to be conscious of the speed of your tug?

A. Yes, sir, I noticed that the engines were

(Testimony of James M. Russell.)

idling. They were not running their regular speed, because of the exhaust noise.

Q. What do you estimate was the speed of your tug as it was approaching the bridge?

A. Approximately a mile and a half an hour.

Mr. White: That's all.

The Witness: That is land miles.

Mr. White: Land miles?

The Witness: Yes, sir. [213]

Mr. White: I believe that's all.

Cross-Examination

By Mr. Lister:

Q. When you say land miles you mean it was going over the ground about a mile and a half an hour; is that what you mean?

A. Traveling on the water. Traveling on the water at the speed you would approximately on land.

Q. Well, you were going against the current, weren't you? A. Yes, sir.

Q. And as I understood your answer to this question, you were making a mile and a half over the ground, mile and a half an hour; is that right?

A. Against the current, yes, sir.

Q. Would you have any idea what the current was there?

A. I would say approximately five miles an hour since the water was high at that time.

Q. As a matter of fact, the water was quite high, wasn't it? A. I don't know how high it was.

(Testimony of James M. Russell.)

Q. Were you the one that got the message, I mean that called and told the bridge you were coming through? A. No, sir.

Q. Who did that? A. The office.

Q. Do you know when they told them they were due? A. No, sir. [214]

Q. When did you expect to be there? When did you expect to be at the bridge?

A. When we got there.

Q. Well, is that what your office told the bridge tender? A. I don't know.

Mr. Wood: Objected to as immaterial, when they got to the bridge or what someone else told someone else. He was not there.

Q. (By Mr. Lister): Do you know who actually gave the bridge operator the information that the equipment was coming through and to have the bridge open? A. I do not.

Q. Well, who would have that information?

The Court: What difference would it make, Mr. Lister? There is no question that the bridge was ready for them at the time they arrived.

Mr. Lister: Here is what I would like to ask you. Mr. Adams testified that the information given him was to be there at eight-thirty. Did you contemplate when you started up the river you would be there at eight-thirty in the morning?

A. Nobody gave me any information about that.

Q. What is that?

A. Nobody told me about eight-thirty or any

(Testimony of James M. Russell.)

time at all. All I know is that they told me the bridge would be ready for me.

Mr. Wood: If your Honor please, the bridge lifted the draw, it was waiting for them. They got the notice. It doesn't make [215] any difference whether they were there early or late.

The Court: I can't see the materiality of that testimony at all.

Q. (By Mr. Lister): Did you make any stops between Vancouver and the bridge?

A. At Bonneville.

Q. How long did you stop there?

A. I don't know.

Q. How do you know, how did you know you stopped there?

A. Because we have to go through the locks.

Q. Is that the only reason you know you stopped there?

A. That's right, I happened to be on watch at the time.

Q. Well then, you would know how long you stopped, wouldn't you?

A. If you wish to know, sir, it is in my log book.

Q. What is your relation to the Russell Towboat and Moorage Company?

A. I am one of the two brothers.

Q. Well, are you a stockholder in the Company?

A. No, sir.

Q. Are you an officer of the Company?

A. No, sir.

(Testimony of James M. Russell.)

Q. What is your relation to the Russell Family, Incorporated?

A. I am a son of the family and a brother of my brother.

Q. Do you have interests—are you a stockholder in the Russell Family, Incorporated? [216]

Q. Who employes you; who do you work for?

A. Russell Towboat and Moorage Company.

Q. Were you working for Russell Towboat and Moorage Company on the day of this accident?

A. I was.

Q. How do you know you were?

A. Because they hired me.

Q. When you say they hired you, who actually hired you?

A. Russell Towboat and Moorage Company.

Q. Well, Russell Towboat and Moorage Company, as such couldn't hire you. Who actually hired you?

A. The management.

Q. Who was it, John Smith, Jim Russell, or who was it?

A. Russell Towboat and Moorage Company.

Q. Well, Mr. Russell, what individual hired you to work for the Russell Towboat and Moorage Company?

A. The management.

Q. Who is it? A. It would be my brother.

Q. What is his name? A. Lew Russell, Jr.

Q. How did you do any work for the Russell Family, Inc.?

A. I don't know.

Q. Who was on this equipment, the tug, on the day of the accident, other than you and Mr. Sade-wasser? [217]

A. Two deckhands.

(Testimony of James M. Russell.)

Q. Did you and Mr. Sadewasser alternate on piloting this equipment?

A. We stand six hour watches on the towboat.

Q. The deckhands didn't pilot the ship at any time?

A. Absolutely not.

Q. When you were on duty did one of the deckhands work with you, and when he was on duty did one of them work with him?

A. Yes, sir.

Q. They alternated the same as you and Sadewasser; is that correct?

A. Each man had a deckhand to work on the watch that he worked on.

Q. Where were these deckhands at the time this equipment was approaching the bridge?

A. I don't know.

Q. You say you have passed under this draw when it was raised on two occasions other than the one in question; is that correct?

A. Yes, sir.

Q. You say that on no other occasion did they sound a whistle?

A. No, sir, they never did.

Q. Did you see this red light in the middle of the drawspan?

A. No, sir.

Q. Did you ever see a red light in the middle of a drawspan?

A. At no time have I ever seen a red light in the middle of [218] the drawspan.

Q. Did you ever pass through the bridge at night?

A. Yes, sir.

Q. When the span was raised?

A. No, sir.

Q. The times you passed through the bridge with the span raised were in the daytime; is that correct?

(Testimony of James M. Russell.)

A. That's right, sir.

Q. Do you remember when those occasions were?

A. No, sir.

Q. Well, you are positive there are two times though?

A. Yes, sir, I remember one time. I will say that.

Q. When was that, please?

A. When the bridge hired General Construction Company to do something, pile driving work up there, to move their bridge span. I brought the equipment back down from General Construction Company, and they notified the bridge to open the span and they opened the span just far enough to hit the top of the pile driver.

Q. When was that?

A. You will have to check with General Construction Company.

Q. Well, with regard to June of 1950, would it be a month before that, two months, a year?

A. I don't know.

Q. Wouldn't you know whether it was 1950 or not?

A. No, sir, I don't know. [219]

Q. Where did you say the equipment was; from where did you get the equipment?

A. On the upstream side of the bridge, the Oregon shore.

Q. You took it through the bridge; the span was raised, and you bought it downstream from the bridge; is that your testimony?

A. I took it back to Portland at that time, and the bridge was not high enough though it missed

(Testimony of James M. Russell.)

about two inches, and the roller on top of the pile driver rolled underneath the bottom of the bridge. Your Honor, do you mind if I stand up? I get sort of dizzy here.

The Court: All right, go ahead.

Q. (By Mr. Lister): You couldn't give us any idea of any other time it was that you went through there when the span was raised? A. No, sir.

Q. Nor what kind of equipment you had?

A. No, I don't remember.

Q. I suppose you agree with Mr. Sadewasser?

The Court: Don't you feel well?

The Witness: I feel all right, sir, I just feel sort of a little dizzy. I don't know what from.

The Court: Let's take a recess.

The Witness: That's all right, I will answer the questions, your Honor.

Mr. Wood: I think he can finish all right. [220]

The Witness: I will finish all right. I just like to lean against something.

The Court: All right, go ahead.

Q. (By Mr. Lister): Do you have any mechanical equipment on the tug to register speed? Is there any, like compared with a speedometer on the automobile?

A. Yes, sir, we have tachometers on the towboat.

Q. Where is that located?

A. In the pilothouse.

Q. You would not be in a position to see that?

A. Not while I was off duty, no.

Q. From where you say you stood, as I under-

(Testimony of James M. Russell.)

stand it, you were still lower, nearer the water than the pilot would be; is that correct?

A. That's right.

Q. You are farther to the stern and to port; is that correct? A. I beg your pardon?

Q. I understood you to say you were to the port and farther aft from where the pilot was standing?

A. I was about three feet back from the front of the boat.

Q. How many? A. About three feet.

Q. About three feet? A. Yes, sir.

Q. Well then, would you be farther ahead than the pilot was? [221] A. No, sir.

Q. As you stood there would the gravel barge be right in front of you? A. Yes, sir, part of it.

Q. Sir? A. Just part of it, all I could see.

Q. Was the gravel barge loaded with gravel?

A. I don't remember, sir.

Q. You don't remember whether you had any load on the gravel barge at all?

A. It was drawing six feet of water, if that's what you mean.

Q. How do you know that?

A. Because it was loaded before.

Q. I thought you said you didn't remember?

A. I said I didn't remember whether it had gravel on it or what it had on it.

Q. Oh. Well, how much freeboard would it have, drawing six foot of water?

A. About four or five inches.

Mr. Lister: I think that's all.

(Testimony of James M. Russell.)

Cross-Examination

By Mr. White:

Q. I had one question to ask. I wanted to show you Exhibit 1, Captain. Take a look at that picture, will you, please. That shows how the crane was secured to the deck of the LSM; does [222] it not?

A. Yes, sir, both on the boom and on the base of it.

Q. That's right. Now when you have commanded a tug do you have any responsibility of observing the seaworthy stowage or trim of anything you take into it?

A. Yes, sir, that's the first thing you are supposed to observe is whether your tow is fit to be pushed up the river, and especially in fast water.

Q. Now you have had about 15 years experience towing different objects and crafts, have you?

A. That and being on the deck, sir.

Q. You are licensed to navigate the river?

A. Yes, sir, from Portland to Celilo.

Q. In your opinion, was that crane barge as placed on the LSM stowed and secured in a seaworthy and proper manner?

A. Yes, sir, it was.

Mr. White: That's all.

Recross-Examination

By Mr. Lister:

Q. Did you put it on there, Mr. Russell?

A. No, sir.

(Testimony of James M. Russell.)

Q. What did you do in the way of examining it to see if it was properly stowed?

A. Just checked to see that the deck was level, there wasn't any water around, down by the stern, and also to see that the boom [223] was anchored properly so if we did hit a windstorm up above it wouldn't turn it around.

Q. Why wouldn't it be just as practicable to turn the boom around the other way and have it downstream rather than upstream?

A. That I couldn't answer, sir.

Q. As far as you know, it would be just as well to haul one way as the other?

A. No, sir, it would not be seamanship to put it on the stern.

Q. Why wouldn't it?

A. Did you ever see a crane going down the river with the boom hanging out over the stern of it?

Q. Can you tell me why it would not be equally seaworthy if the boom had been fixed in a downstream position rather than upstream position?

A. Yes, I can, behind me, to go into the locks the boom would have been hanging on the back and hit the side of the locks with that crane barge and swing the crane around, probably hit the boat, bend it or some other way.

Q. Why would it do it more to the rear, aft, instead of sitting forward?

A. I beg your pardon?

Q. Why would it do that more if it were aft than it would as the way it was forward?

(Testimony of James M. Russell.)

A. There would be no way to secure the boom.

Q. What is that? [224]

A. There would be no way to secure the boom.

Q. How did you secure it in the forward position?

A. With a cable hooked onto the end of the block as you can see in the picture. There is a cable runs down the end of the boom, and it was anchored to the deck of the crane barge so it wouldn't swing.

Q. Was that boom permanently anchored to a, to the deck of the barge?

A. I don't follow you there.

Q. Was the bottom end of that boom permanently secured to the deck of the barge?

A. If you mean the power unit part of it?

Q. Well, there is that long shaft that sticks up. That's what you call the boom, isn't it?

A. Yes.

Q. Was the lower end of that permanently attached to the deck of the barge?

A. The lower end, yes, the lower end was but not—the higher end was not.

Q. As I understand, you say it was, this anchor point was back of the middle of the crane barge; is that correct?

A. No, I did not say, I think the anchor point was off the boom, off the end of the boom, straight to the deck.

Q. Well, if the bottom of the boom was aft or forward of the center, why couldn't you have anchored it to the rear as well [225] as ahead?

(Testimony of James M. Russell.)

A. Because the crane does not sit that way on the barge. It sits on the back end of the barge. It doesn't sit on the middle of it.

Q. That is just what I asked you.

A. I didn't understand your question there.

Mr. Lister: That's all.

The Court: That's all.

(Witness excused.)

The Court: Call your next witness.

Mr. Wood: Call Captain Lew Russell, Jr. [226]

LEW RUSSELL, JR.

called as a witness by the respondent Tug Lew Russell, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. Wood:

Q. What is your name?

A. Captain Lew Russell.

Q. You live in Portland, do you?

A. I live in Washington County. My address is 6622 Southwest Mayo Street, Portland, Oregon.

Q. Are you an officer of the Russell Family, Inc.?

A. Yes, sir, I am the secretary of the Russell Family, Inc., and the manager.

Q. And are you also affiliated with Russell Tow-boat and Moorage Company?

(Testimony of Lew Russell, Jr.)

A. Yes, sir, I am the President of the Russell Towboat and Moorage Company and also manager of that Company.

Q. Now do you hold stock in the Russell Family, Inc.?

A. Yes, sir.

Q. Now would you just explain to the Court the different purposes or the different businesses that Russell Family, Inc., is in, and Russell Towboat and Moorage?

A. Yes, sir, Russell Towboat and Moorage Company is an operating Towboat Company on the Willamette and Columbia Rivers, and [227] Russell Family, Inc., rents equipment to Russell Towboat and to other carriers.

Q. Now Crane Barge 25 referred to in the subject of this litigation, who owned Crane Barge 25?

A. That belonged to Russell Family, Inc.

Q. And that is an LSM type steel hull vessel?

A. Yes, sir.

Q. About how long?

A. Approximately 200 feet long.

Q. About what is the beam?

A. Approximately four feet beam.

Q. And is there any propelling machinery in that?

A. No, sir.

Q. That is a barge?

A. Yes, sir.

Q. On top of the deck of the barge is this crane secured to the barge?

A. Yes, sir, the crane base is welded firmly to the steel deck of the barge and then a crane is set on the base and bolted to it.

(Testimony of Lew Russell, Jr.)

Q. On this trip up the river—I am speaking of June 13, 1950, where we had this accident in which there is this discussion—was there another craft on top of, on the deck as cargo on the Crane Barge 25?

A. Yes, sir, a small landing craft, steel.

Q. A steel landing craft, and how big was [228] that?

A. That was approximately 55 feet by 14 feet beam, six foot deep, and weighing a little over 22 tons.

Q. Now did Russell Family, Inc., charter the LSM Crane Barge 25 to the McNary Dam contractors?

A. Yes, sir, I did that.

Q. Did they also charter the LCM, the small craft on top?

A. Yes, sir.

Q. Was that in the same charter, same arrangements?

A. Yes, sir, they went together in the same arrangements.

Q. What was the purpose, what was the intended use for this craft, if you know?

A. The crane was to be used to build McNary Dam, and which it did very successfully, handled all of the problems on the water, and the small landing craft used to haul the crews to the crane while it was in operation on that dam.

Q. The small craft that was on the deck at the time was more or less a tender to the LSM; is that right?

A. Yes, sir.

Q. Did that small craft have a self-propelling engine in it?

(Testimony of Lew Russell, Jr.)

A. Yes, it had two Gray Marine engines, 165 horsepower a piece.

Q. How much did that small craft weight?

A. A little over 22 tons.

Q. How did you put that craft on top of the deck of the LSM?

A. I ran the crane barge myself and had some slings pick it up and set it on the tug. [229]

Q. In other words, this crane barge that was damaged in this accident, that was the equipment that put the Laura Louise, which is the LCM, aboard the LSM; is that correct? A. Yes, sir.

(Document, statement of actual repairs to LSM Crane Barge 25, marked Respondent's 3 for identification.)

Q. (By Mr. Wood): I show you, Mr. Russell, this marked Respondent's next in order for identification. As a result of this collision with the Hood River-White Salmon Bridge, Mr. Russell, the Crane Barge 25 was damaged; is that right?

A. Yes, sir.

Q. What was the character of the damage? Do you recall?

A. Yes, sir, the boom was bent and sprung very badly. It would be dangerous to make any lifts with the crane.

Q. How about bolts, were there any deck plating ripped out or anything?

A. Well, yes, the boom section itself, the angle irons were broken and bent, rivets sprung and it necessitated quite a repair job.

(Testimony of Lew Russell, Jr.)

Q. The LCI was called, referred to as the Laura Louise, wasn't it?

A. Yes, I believe that's an LCM.

Q. LCM.

A. LCM under the name of Laura Louise. [230]

Q. The LCM and the crane barge were under charter at the time they left the moorage at Vancouver?

A. Yes, sir.

Q. And they were proceeding up the river?

A. Yes, sir.

Q. They were chartered to McNary Dam General Contractors?

A. That is correct, sir.

Q. Now after this collision who repaired the damage to the LCM?

A. The McNary Dam Contractors repaired the damage.

Q. Did they deduct it from money due you?

A. Yes, sir.

Q. And this Respondent's Exhibit 3 for identification, is that the detailed statement of the actual cost of repair of the LSM, the Crane Barge 25, that you received from them?

A. Yes, sir.

Q. I notice at the bottom of it they also deducted as part, as an item of expense from Russell Family, Inc., the rental. It says, "Rental on barge 6/12/50 through 6/30/50, rental due for two days only." What does that mean?

A. Well, the barge was out of commission due to the damage of the crane so that they could not use it in their work so they deducted from their payments that rental.

(Testimony of Lew Russell, Jr.)

Q. In other words, for the 30 days from the time it left the moorage they only had two days' use; is that it? [231] A. Yes, sir.

Q. So they deducted the 28 days?

A. That's right.

Q. I see. Also right below there, "Rental on tug 6/12/50 through 6/30/50, rental due, two days only." What does that represent?

A. Well, they also did not pay me for the use of the towboat because they were unable to use it because of the crane being out of commission.

Q. By "towboat" what craft are you referring to?

A. The Laura Louise, the little boat that was on the deck.

Mr. Wood: I might say, your Honor, Mr. Lister to facilitate matters talked on the telephone with an officer or a person of the McNary Dam Contractors in reference to determining in his own mind whether these expenses and items were necessary and related to the action; is that right?

Mr. Lister: That is correct, your Honor, and I told Mr. White that I would stipulate if that gentleman were here he would testify that these prices were charged and were fair and reasonable for the services rendered.

Mr. Wood: And related to this accident?

Mr. Lister: Well, I don't—Mr. Russell has testified to that. He would say they were caused by some violence. I think that's as far as we can go, Mr. White.

(Testimony of Lew Russell, Jr.)

Q. (By Mr. Wood): Well, I will ask Mr. Russell, are all of these [232] expenses and items as set forth in Respondent's Exhibit 3 for identification necessary to restore Crane Barge 25 in the condition it was before its collision with the Hood River Bridge?

A. Yes, sir.

Q. And these are all related to this accident?

A. Yes, sir.

Mr. Wood: I believe that's all.

The Court: Do you want to introduce, to offer that?

Mr. Wood: Yes, I offer that in evidence as Respondent's Exhibit 3.

The Court: It will be admitted.

(Thereupon, the document previously marked Respondent's 3 for identification was received in evidence as Respondent's Exhibit 3.)

The Court: It has been admitted, there being no objection.

Q. (By Mr. Wood): This shows that the total amount, Mr. Russell, that was taken from Russell Family because of this collision was \$3,306.11; is that correct?

A. Yes, sir.

Q. And that is what Russell Family, Inc., is asking in this cross reply against the bridge?

A. Yes, sir.

Q. That's all.

(Testimony of Lew Russell, Jr.)

Cross-Examination

By Mr. Lister:

Q. I didn't understand just exactly the relationship of the Russell Towboat and Moorage Company, Mr. Russell.

A. I run Russell Towboat and Moorage Company.

Q. Did you say you were President?

A. President and manager.

Q. You are the secretary and manager of Russell Family, Inc.?

A. Yes, sir.

Q. When you make a deal, do you sign a contract for both concerns?

A. I do all the dealing for both companies, yes, sir.

Q. Did you have any writing between Russell Family, Inc., and Russell Towboat and Moorage Company in regard to this particular transaction?

A. Which transaction are you referring to?

Q. The transaction involving the taking of this equipment up to the McNary Dam, delivering it to the contractors up there?

A. It is not customary to have a written contract on moves of a barge on the river here, sir. We have a filed tariff to take care of that.

Q. What is that, please?

A. We have a filed tariff.

Q. A filed tariff?

A. Yes, that's why it is not necessary to have a written contract to take care of such a move.

(Testimony of Lew Russell, Jr.)

Q. Are all of the men on the Lew Russell, Sr., wasn't that the name of the tug? [234]

A. Yes, sir.

Q. Are they employes of Russell Towboat and Moorage Company? A. Yes, sir.

Q. Paid by Russell Towboat and Moorage Company? A. Yes, sir.

Q. How long would it take the tug to tow this equipment to McNary Dam? When did you expect to have it there, Mr. Russell?

A. It would depend on the interchange at Celilo. That is a variable factor. This tug would only take the equipment to Celilo, and another tug would take it from Celilo on up.

Q. How did you get up through the—what about at Bonneville? You didn't have to make any change there? A. No.

Q. Do you yourself operate as a Captain on the river still?

A. Yes, sir, I have a Master's license for a thousand ton, steam and diesel, from Celilo to the Ross Island Bridge and from Astoria to the Megler Ferry Crossing, have had that for seven years.

Q. Do you still work on the river?

A. Yes, sir, I do all the fast water for Tidewater and Russell Towboat and Moorage.

Q. What did you say the beam on the Crane Barge 25 was? A. Approximately 34 feet.

Q. 34, 200 feet long? A. Yes, sir.

Q. Where was the base of this boom located with regard to fore [235] and aft on this crane barge?

(Testimony of Lew Russell, Jr.)

A. The boom is fastened into—the base of the boom is fastened into the cab of the crane.

Q. Well, if it is 200 feet long, where would this, where would the base of the boom be located with regard to the fore and aft on the ship, on the barge?

A. The base of the boom is fastened by two pins into the crane base.

Q. It, in turn, where is it located on the crane barge?

A. The way that this—I happened to see one of those pictures, and then I also made up this tow myself, and the base of the boom is aft on this particular crane.

Q. How far aft is the center line?

A. I would say about half-way—maybe a little—about half-way between the center and stern.

Q. Is the base of that adjustable? Can you move it back and forth along the deck of the barge?

A. Are you referring to the base of the crane or the base of the boom?

Q. Well, how do you distinguished between the crane and the boom? I thought they were the same thing.

A. The boom is the long steel object that can be raised and lowered.

Q. Yes.

A. The crane base is the base that is square, and that whole [236] crane sits on that.

Q. And if you move that base you would move the bottom of the boom automatically, wouldn't you?

A. If it were possible, but it is not possible.

(Testimony of Lew Russell, Jr.)

Q. That's what I am getting at. Is the base fixed stationary so that it did not move about on the barge?

A. That boom base swings with the main crane, but the crane base is welded solid to the barge.

Q. I don't think there is anything else, I think that is all.

Redirect Examination

By Mr. Wood:

Q. I suppose you have passed under that bridge many times with tugs and tows, have you not?

A. Yes, sir, I have made many hundreds of trips underneath the bridge.

Q. Most of the times they didn't have to lift the draw, did they? A. Very rarely.

Q. Have you gone up there when they have lifted the draw?

A. In the last four years, approximately three times I have handled dredges, pile drivers and——

Q. Did they ever give you two blows of the whistle or any whistle signaling it was all right for you to come on?

A. I have never heard a whistle from that bridge in my time.

Q. That's all. [237]

Recross-Examination

By Mr. Lister:

Q. Captain, those three times, would that be prior to June 13, 1950? A. Yes, sir.

(Testimony of Lew Russell, Jr.)

Q. Have you been under there since June 13, 1950?

A. I have been under there, but I have not had to open the bridge.

Q. That's what I meant, you have not been through when they have had to raise or lower the span since June 13, 1950?

A. That's right.

Q. Prior to that you were under there, you estimate, three times when they had to raise the draw?

A. Yes, sir.

Q. Well, can you identify any of those times?

A. I couldn't give you the exact times. I would have to do some research on that, but I brought a large suction dredge for General Construction Company from The Dalles down to there. We had to open it to that. I have also brought pile drivers down there for General Construction Company. I don't recall, I would say around in the last four years about three times. We very rarely use that bridge excepting for large equipment.

Q. Were those passages always made in the day-time?

A. Yes, sir.

Q. Did you ever notice a red light in the middle of this liftspan? [238]

A. I have never noticed a red light in the day-time, sir.

Q. You can see traffic lights on the street all right, can't you?

A. From 25 feet away, yes, sir.

Q. Is that as far as you can see them?

(Testimony of Lew Russell, Jr.)

A. I probably can see them farther than you can, sir.

Q. You are sure that at no time have they given you a whistle signal or any signal to come through when that bridge span has been raised?

A. They have maybe blown a whistle, but I have never heard a whistle from that bridge, and I have excellent ears.

Q. That's all.

Mr. Wood: No further questions.

Mr. White: No question.

The Court: That's all, the witness is excused.

(Witness excused.)

Mr. Wood: I would like to offer in evidence the Regulations of the United States Army Engineers that have been referred to on the stand that went into effect after the accident.

The Court: Any objection?

Mr. Lister: Well, if your Honor please, I don't think it would be binding on anybody or I don't see how it would have any particular significance in the issues in this case.

The Court: Neither do I, but I thought if you just wanted to object, if you object to them, they won't go in. [239]

Mr. Wood: I think they are clearly admissible on two grounds, your Honor, which I will be glad to explain.

The Court: If they are, I would like to know the grounds upon which they are admissible.

Mr. Wood: Yes, they are admissible, in the first place, on the ground that these gentlemen claim that that red light should have been of some effect on us even during the daytime. These Regulations which the Corps of Engineers and which Mr. Chandler himself says he suggested do not suggest a red light or anything like that for the daytime.

The Court: I am not interested in the red light.

Mr. Wood: They suggest a green flag and a green light at night, and the other purpose of introducing this is to show that even now, even now there is no requirement in the Regulations that the bridge shall give a two-blast signal to the boat telling them to come on. They are not in the old Regulations, and they are not in the new Regulations.

The Court: The objection is sustained.

Mr. Wood: Well, I'd like to have them marked anyhow.

The Court: It may be marked.

(Document, Regulations of U. S. Corps of Engineers, marked Respondent's 4 for identification.)

The Court: I am going to change my ruling on that. I am going to take it under advisement instead of rejecting it at this time. I want to check some law. [240]

(Thereupon, the document previously marked Respondent's 4 for identification was received in evidence Respondent's Exhibit No. 4, the Court taking the same under advisement.)

Mr. White: Your Honor, I might say that I wish to withdraw my motion for a non-suit. I don't want to complicate any question of that having an effect on my cross reply.

The Court: All right, it may be withdrawn.

Mr. White: That is our case.

Mr. Wood: We have no further testimony.

The Court: Mr. Lister?

Mr. Lister: I want to call Mr. Benson. [241]

HAROLD BENSON

recalled on rebuttal, testified as follows:

Direct Examination

By Mr. Lister:

Q. You are Mr. Harold Benson who has already been sworn and testified in this case? A. Yes.

Q. Will you state whether or not, so far as you know, there has been any raising of this draw span since you commenced working for this bridge when you were not present? A. Yes, there has.

Q. How many—what I am getting at, what period were you there, and what period weren't you there, if that will answer the question?

The Court: Well, we will just assume he was there most of the time. He testified previously that on several occasions he was out of town, and, therefore, he was not there at the time it was raised.

Q. (By Mr. Lister): Could you give us an idea how many times you have been there when the span has been raised, Mr. Benson?

(Testimony of Harold Benson.)

A. Well, I would say most of the time in the last three years.

Q. Will you state whether or not when that span is raised and is ready for equipment to come in, signal has been given, and if so, how?

Mr. Wood: Objected to because that's part of their case in [242] chief.

Mr. White: And it is leading.

The Court: I am going to let it in. Frankly, I am going to tell you I don't think it is going to make any difference unless the Regulations required that they blow the whistle, but I am going to let the testimony in.

The Witness: It has been the custom to blow a whistle to let a vessel know that the bridge is clear to go under.

Q. (By Mr. Lister): Have you ever been on the bridge when the span was raised and ready for a vessel to come through and they have not blown that whistle? A. Not when I was there.

Q. Did you do any work towards repairing that light in the center of the span after this accident of June 13, 1950? A. I did not.

Q. Well, would you know whether or not it has been repaired at any time since then?

A. The only repair——

The Court: If you want to open the inquiry I am going to let in all the Regulations because you have objected to it on the ground that nothing happened, apparently, any repairs——

Mr. Lister: Well, if your Honor please, here is

(Testimony of Harold Benson.)

my thought on this. There has been some difference of opinion as to whether that light was burning at the time.

The Court: The only positive evidence here was that the [243] light was burning up to the time the power failed. Now the people who have testified on behalf of the Respondents also didn't notice whether it was burning or not.

Mr. Lister: Then that is all.

Examination

By the Court:

Q. Mr. Benson, I want to ask you a question. Did you ever notify the Russell Towboat and Moorage Company that they should wait for a blast before they proceed to enter the span? A. No.

Q. Do you know if anyone else has ever done that?

A. Not that I know of. That's all I know, that it has been a custom, common practice.

Q. Do you know whether any other towboat company has been notified to wait for a blast by the bridge? A. Not that I know of.

Q. Well, while you were on the bridge and the spans were opened did the ships always respond with one or more blasts after the bridge had sounded its blast? A. I don't remember about that.

Q. Can you ever recall any of the ships sounding the horn, the whistle? A. Yes.

Q. Asking for permission to enter?

(Testimony of Harold Benson.)

A. Just merely sounding their whistle as it come up the river to go under. [244]

Q. But do you know whether that was before or after the span was lifted?

A. Oh, yes, before.

Q. Was there any regular practice with reference to what ships should do?

A. No regular practice in reference to the ship.

Q. The only custom, as far as the bridge is concerned, were two blasts that would be given to come ahead?

A. That's right.

Q. Sometimes the ships responded; sometimes they didn't?

A. That's right.

Mr. Wood: I don't think he ever said the ships responded to that. I don't think he ever said that. He said they blew sometimes to raise the draw. That's the only whistle they ever gave.

The Court: Is that correct, Mr. Benson?

The Witness: That's right, sometimes a boat would sound a whistle to go under the draw, but I couldn't say that they have in every case.

Q. Well, I wanted to know whether Mr. Wood's statement was correct or mine. Did the ship sound its whistle in response to the bridge's whistle, or before?

A. Usually before.

Q. Usually before, that's all.

Mr. Lister: That's all, thank you. [245]

OSCAR HERMAN ADAMS
recalled for rebuttal, testified as follows:

Direct Examination

By Mr. Lister:

Q. You are Mr. Adams who testified the other day, aren't you? A. Yes, sir.

Q. Mr. O. H. Adams. Now during the time you have been an attendant on this bridge has there ever been a time when you were present that, that when the bridge was in a position to let equipment through, it did not sound a signal?

The Court: Mr. Lister, you have brought that out in your direct examination.

Mr. Lister: Of this gentleman?

The Court: Mr. Adams has already testified to that.

Mr. Lister: This gentleman?

The Court: That's right. He said every time a ship went through he signaled twice before they proceeded.

Mr. Lister: Fine, thank you, that's all.

Examination

By the Court:

Q. Mr. Adams, I will ask you the same question I asked Mr. Benson. Did you ever notify the Russell Towboat and Moorage Company or any other towboat company not to proceed, to go through the span unless you gave them two blasts?

A. I never did.

Q. Is your testimony the same as Mr. Benson's

(Testimony of Oscar Herman Adams.)

that sometimes [246] the ship blew the whistle, and sometimes they didn't?

A. Most generally they always did blow their whistle, as a rule, too, when they wanted the bridge raised.

Q. And if it was raised, then they wouldn't blow it. You would just give them the two blasts?

A. Well, as a rule, we never had the bridge raised. We didn't even know to raise the bridge until they blowed their whistle. Of course, we was always called, but we couldn't tell whether that was the boat or that was the boat coming.

Q. Did you hear a whistle from the Lew Russell, Sr.?

A. No, there was no whistle blown. The wind was blowing right towards me up the river, and I would have undoubtedly have heard it.

The Court: That's all.

Q. (By Mr. Lister): Mr. Adams, in connection with the Court's question, what is the fact as to whether or not craft moving back and forth would wait until they got those two blasts before they came through the bridge?

A. As a rule they did, yes, sir.

Mr. Wood: That's part of his case in chief. I don't think he ought to go into that.

The Court: The objection is overruled.

Mr. Lister: That is all. [247]

(Testimony of Oscar Herman Adams.)

Cross-Examination

By Mr. Wood:

Q. I want to ask you a question now that it has been brought up. Mr. Adams, the only time you ever go out on the bridge at all preparatory to lifting the draw is when you have some 12 hours' notice that some craft is coming up the river that may want the draw lifted; is that right?

A. Yes, that's the only time we have occasion to go out on the bridge.

Q. Certainly, and most of the times craft go under there without your being there at all because they go right under the bridge?

A. That's right.

Q. It's only a rare instance that you lift the draw at all, isn't it?

A. Yes, when we are notified.

Q. When you are notified?

A. That's right.

Q. All right. Well, then, when a ship comes up the river, and you have been notified that a ship is coming up with a boom on it and you see that that's the ship there coming up with a boom on it and you raise the draw, you don't wait for that whistle to raise the draw, do you?

A. Well——

Q. You didn't this time, did you?

A. No, we didn't.

Q. Well, that's all there is to it. [248]

The Court: Any further questions?

(Testimony of Oscar Herman Adams.)

Q. (By Mr. Lister): Just a minute now. Mr. Wood gave the impression that you only appeared there when they were going to raise the draw. Is that—I thought you were——

The Court: I know there is testimony there that he used to take the tolls for the bridge. He was on the bridge all the time.

Mr. Lister: That's what I meant. Thank you.

(Witness excused.)

Mr. Lister: Your Honor, I think the Court told me that we offered Exhibit 17, and you didn't rule it was accepted.

The Court: Which one is 17?

Mr. Lister: Those Mr. Chandler identified as the additional repairs.

The Court: Exhibit 17, is there any objection to it? It's an item of \$23,710 testified to as by Mr. Chandler.

Mr. Wood: I object to it.

The Court: It may be received, Exhibit 17.

(Thereupon, the document previously marked Libelant's No. 17 was received in evidence as Libelant's Exhibit 17.)

Mr. Lister: That is our case, your Honor.

The Court: Do you want to admit the Government Regulations with reference to opening the bridges on the Willamette River?

Mr. Lister: I tried to get in touch with Mr. Buck at the noon hour. He was not there. They

told me the man who really [249] knew about that was ill, not in the office. I asked them if they would get me the record. They had not gotten it when I had to come back to Court.

The Court: Do you want to make a statement now or submit any authorities?

Mr. Lister: I would like to submit some authorities. I would rather have a little time to do it.

The Court: On what point, Mr. Lister?

Mr. Lister: Well, I have not had a chance to examine the authorities that Mr. Wood called your attention to here yesterday, and I would like to examine those, and, if necessary, submit some authorities that I feel might not be exactly consistent with the excerpts which Mr. Wood read yesterday.

(Thereupon there was discussion between Court and Counsel.)

The Court: Well, today is Friday. Mr. Lister can have until Monday, February 5th, and the Respondents will have until February 14th in which to answer Mr. Lister. Mr. Lister, you can have until February 20th within which to answer. We will now adjourn until ten o'clock tomorrow morning.

(Thereupon, the trial was recessed pending submission of briefs by respective [250] Counsel.

[Title of District Court and Cause.]

REPORTER'S CERTIFICATE

State of Oregon,
County of Multnomah—ss.

I, Gordon R. Griffiths, hereby certify that I was the official reporter pro tem in the above-entitled libelm in rem in Personam, heard before the Honorable Gus Solomon in the United States District Court, District of Oregon, at Portland, Oregon, on January 25th, 1951; that I reported in shorthand all proceedings had and testimony taken in the above-entitled matter, that thereafter my notes were reduced to typewriting under my direction; that the foregoing transcript consisting of Pages 1 to 250, both inclusive, constitutes a full, true and correct transcript of all proceedings had and testimony taken in the above-entitled matter, and of the whole thereof.

I further certify that I am not related to nor Counsel for nor employe of any of the parties to the above-entitled libelm in rem Personam.

Witness my hand at Portland, Oregon, this 25th day of July, 1951.

.....,

Official Reporter Pro Tem.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Libel in Rem and Personam, Libelant's Stipulation for Costs, Claims of Owners, Answer of Respondents and Claimants, Stipulation to Abide and Pay Decree, Order Permitting Attorney Erskine Wood to Withdraw, Stipulation re Russell Family, Inc., Order Allowing Russell Family to Intervene, Petition and Intervening Libel of Russell Family, Inc., Stipulation for Costs, Answer of Libelant, Cost Bill of Russell Family, Inc., Libelant's Exceptions and Objections to Findings and Conclusions, Findings of Fact and Conclusions of Law, Final Decree, Notice of Appeal by Libelant, Petition for Appeal, Order Allowing Appeal, Appellant's Assignment of Errors, Bond on Appeal, Order Approving Bond and Staying Execution, Order Extending Time to File Appeal, Order to Send Exhibits, Designation of Record, and Transcript of Docket Entries, constitute the record on appeal from a decree of said court in a cause therein numbered Civil 5749, in which Oregon-Washington Bridge Company is libelant and appellant, and the Russell Family, Inc., and the Russell Towboat and Moorage Company are respondents and appellees; that the said record has been pre-

pared by me in accordance with the said designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that there is enclosed herewith duplicate transcript of testimony filed in this office in this cause, together with libelant's exhibits 1 to 17 inclusive, and respondent's exhibits 3 and 4.

I further certify that the fee of \$5.00 for filing notice of appeal has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court in Portland, in said District, this 28th day of July, 1951.

[Seal] LOWELL MUNDORFF,
Clerk.

/s/ F. L. BUCK,
Chief Deputy.

[Endorsed]: No. 13051. United States Court of Appeals for the Ninth Circuit. Oregon-Washington Bridge Company, a Corporation, Appellant, vs. Tug "Lew Russell, Sr.," and Crane Barge No. 25, Russell Family, Inc., Russell Towboat and Moorage Company, Appellees. Apostles on Appeal. Appeal from the United States District Court for the District of Oregon.

Filed August 10, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

In Admiralty—Civil No. 13051

OREGON-WASHINGTON BRIDGE COMPANY,
Libelant,

vs.

TUG “LEW RUSSELL, SR.,” and CRANE
BARGE No. 25, in Rem,

and

RUSSELL TOWBOAT AND MOORAGE COM-
PANY and RUSSELL FAMILY, INC., in
Personam,

Respondents.

RUSSELL TOWBOAT AND MOORAGE COM-
PANY, Claimant of the Tug “LEW RUS-
SELL, SR.,”

and

RUSSELL FAMILY, INC., Claimant of Crane
Barge No. 25.

RUSSELL FAMILY, INC.,

Intervening Libelant,

vs.

THE HOOD RIVER-WHITE SALMON
BRIDGE, Its Gear and Paraphernalia, in Rem,

and

OREGON-WASHINGTON BRIDGE COMPANY,
Owner and Operator of Said Bridge,
Respondent.

APPELLANT'S STATEMENT OF POINTS ON
APPEAL AND DESIGNATION OF REC-
ORD

1. Under the law and the evidence the trial court should have made findings of fact, conclusions of law and a decree granting to appellant the relief prayed for in its libel herein.

2. The trial court erred in failing and refusing to sustain libelant's exceptions and objections to the findings of fact, conclusions of law and decree made and entered in the District Court in this cause on or about the 5th day of March, 1951.

3. The trial court erred in failing and refusing to find under the evidence submitted that respondents were negligent as alleged in libelant's libel and in failing and refusing to find that the collision and resulting damages were caused by the failure of the tug and its operators to maintain a proper or any lookout; in proceeding at a speed which made it impossible to stop the tug and tow when the operators thereof knew or should have known of the impending collision and in failing to keep the tug and barge under such control that they could have been stopped or otherwise maneuvered so as to have avoided colliding with libelant's bridge and in failing and neglecting to give the signal required by the regulations and waiting thereafter until some affirmative evidence had been furnished by the bridge or its tenders that the bridge was in readiness for the tug and tow to proceed.

4. The evidence as presented to the trial court does not justify finding of any fault or negligence on the part of appellant, but such evidence affirmatively shows that appellant was free from negligence. The trial court erred in not so finding.

5. If this court should find that appellant is not entitled to full recovery, then in the alternative, appellant is at least entitled to contribution from and against respondents.

6. The trial court erred in finding and decreeing that Russell Family, Inc., have and recover from appellant the sum of \$3306.11 or any other sum.

In considering these points it will be necessary that the court consider the entire testimony, including the exhibits, the pleadings of the respective parties, the findings of fact, conclusions of law and decree, libelant's exceptions and objections thereto and appellant hereby designates said portions of the record as material to the consideration of the appeal made to this court in this cause.

Respectfully submitted this 14th day of August, 1951.

/s/ H. LAWRENCE LISTER,
Of Proctors for Oregon-Washington Bridge Com-
pany, Appellant.

Service of the within Appellant's Statement of Points on Appeal and Designation of Record is hereby accepted in Multnomah County, Oregon, this 14th day of August, 1951, by receiving a copy thereof, duly certified to as such by H. Lawrence Lister, of Proctors for Oregon-Washington Bridge Company.

/s/ WILLIAM F. WHITE,

Of Proctors for Respondent, Russell Family, Inc.,
et al.

/s/ ERSKINE B. WOOD,

Of Proctors for Respondent, Russell Towboat and
Moorage Company.

[Endorsed]: Filed August 16, 1951.

